
(1929) 04 CAL CK 0002

Calcutta High Court

Case No: None

Rajaram Majhi

APPELLANT

Vs

Panchanan Ghosh

RESPONDENT

Date of Decision: April 17, 1929

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 250, 438
- Penal Code, 1860 (IPC) - Section 420

Citation: AIR 1929 Cal 762

Hon'ble Judges: Mukerji, J

Bench: Division Bench

Judgement

Mukerji, J.

This is a reference made by the Additional Sessions Judge of Hooghly, u/s 438, Criminal P.C. recommending that an order passed against the complainant Rajaram Majhi u/s 250, Criminal P.C. should be set aside and the said complainant should be summoned and an opportunity given to him to show cause why compensation should not be ordered.

2. In order to appreciate the confusion that has arisen and in consequence of which this reference has been made it is necessary to state the facts quite shortly. Rajaram Majhi was the complainant in a case which he had instituted against one Panchanan Ghose for an offence u/s 420, I.P.C. On 21st July 1928 which was a Saturday, the accused Panchanan was acquitted and if anything is clear in this case it is this that on the acquittal of Panchanan as aforesaid the trial Magistrate Mr. Basanta Kumar Banerji recorded an order which ran in these words:

Complainant to show cause why he should not pay the accused the sum of Rupees one hundred as compensation u/s 250 Criminal P.C.

3. What happened immediately after this order was recorded is a matter of some dispute. But in a matter of such controversial character it is preferable always to go upon the

statement of the Magistrate if in point of fact there is nothing in the record to contradict such a statement. In the explanation which the learned Magistrate submitted in answer to the rule that was issued by the Sessions Judge it was made clear by him that immediately after he had recorded this order,--and it was an order by which he wanted the complainant to show cause then and there for he had not fixed any date in the order by which the cause was to be shown--he received some intimation of some sudden illness in his family which compelled him to leave the Court. He said in that explanation that at the time when he left the Court immediately after recording the aforesaid order he gave verbal orders that cause might be shown on 23rd July 1928. He did not say, however, that he himself told the complainant that the latter was to appear on 23rd July and show cause in pursuance of the said order. According to the explanation what happened afterwards was as follows: On 23rd July 1928 when he came to the Court what he did was that he sent for the complainant and then his pleader Babu Bhagwan Das Chatterjee. The complainant, of course, was not to be found, but the pleader appeared and represented to him that in his absence his Bench Clerk had fixed the date for showing cause as 2nd August 1928. The Magistrate made an enquiry of the Bench Clerk as to whether he had done so and told Babu Bhagawan Das that the Bench Clerk had no power to allow any time as he himself fixed 23rd July 1928. The Bench Clerk denied having fixed the date for 2nd August 1928. Babu Bhagawan Das, as far as can be made out from the Magistrate's explanation, then asked the Magistrate to give time till 2nd August 1928. On being asked by the Magistrate to file a petition, Babu Bhagawan Das did so, with the result that the Magistrate made an order allowing time till 24th July 1928. On 24th July 1928 the complainant did not appear and the learned Magistrate then recorded the following order:

On 23-7-1928 complainant wanted time to show cause and he was granted one day's time. No cause has ever been shown today. He is not found even after calls. The order to pay compensation of Rs. 50 to the accused is therefore made absolute.

4. It is this order which forms the subject matter of this reference.

5. Now two things are quite clear. One is that on 21st July 1928 when the Magistrate called upon the complainant to show cause by the written order that he passed he fixed no date, and as I have said the natural consequence of that order was that the complainant was to show cause then and there until and unless he obtained some order from the Court adjourning the matter to a further date. As the Court was unable to sit any longer it was obviously the duty of the Court to fix a date on which the cause was to be shown. No written order was passed fixing such date and all that the Magistrate is able to tell us is that before leaving the Court he made a verbal order. There is nothing at all on the record to indicate--and indeed all circumstances point to the contrary,-- that the complainant was aware that it was the intention of the Magistrate to take the matter up on Monday 23-7-1928. The fact that the complainant's pleader had the audacity to tell the Court knowing full well that an enquiry would immediately be made from the Bench Clerk that the Bench Clerk had fixed 2nd August 1928, goes a long way to indicate that some

such impression must have been produced in the mind of the complainant, and although I am prepared to accept the explanation which the Bench Clerk offered to the Magistrate saying that he had not fixed the 2nd August in contravention of the Magistrate's verbal order, I cannot for a moment believe that the whole of this story as to 2nd August 1928 was a pure invention and an afterthought for the purpose of getting rid of the liability to show cause. Enquiry in point of fact was made and the Bench Clerk denied having fixed the date. But then the fact remains that when the application was filed on 23rd August the complainant was not present in Court. The other fact is that there is absolutely no reason to suggest that the order which the Magistrate passed on the petition of 23rd July fixing the date for 24th July was ever communicated to the complainant. It is only natural therefore that on 24th July the complainant did not appear with the result that the order was passed in his absence. What the law contemplates is that the complainant is to show cause, not that it would be enough to serve notice on the pleader or pass an order on a petition filed by the pleader which may or may not be communicated to the complainant. In the present case I am not at all satisfied either that the complainant knew that he had to show cause on 23rd July 1928 or that he had to show cause on 24th July 1928. For these reasons I am of opinion that the ground upon which the reference has been made by the learned Additional Sessions Judge is perfectly well founded and that if the Magistrate on 23rd July thought that the order which he had passed on 21st July was to be complied with by the complainant he ought to have issued a summons, as the learned Judge suggests, in accordance with the procedure prescribed by the latter part of Section 250(1), Criminal P.C., which says:

If such person is not present, directing the issue of a summons to him to appear and show cause as aforesaid.

6. In any event he should have given notice to the complainant that the date for the showing of cause had been fixed by him for 24th July 1928.

7. It has been contended on behalf of the opposite party who has appeared in this case that when no date was fixed for showing cause by the order of 21st July 1928 it was the bounden duty of the complainant to appear in Court on 23rd July 1928, and if he did not do so he cannot be permitted to complain. In support of this view reliance has been placed on two decisions to which I shall presently refer. One is the case of *Lalit Mohan v. Kunja Behari Ghose* [1914] 18 C.W.N. 702. There what happened was this. The order to show cause was passed on 3rd September 1910. No cause was shown on that date or on any of the dates following and on 6th September the order to show cause was made absolute. Now the point which distinguishes that case from the present one is that in that case there was nothing to show that on 3rd September 1910 immediately after recording the order which purported to be an order calling upon the complainant to show cause then and there in pursuance of the order the Magistrate left the Court depriving the complainant of an opportunity to show cause at that time. This case in my opinion, is not an authority for the proposition that when an order has been made without fixing a date the man is to come necessarily on the next day and comply with the order. If at all, the

case is an authority for the position that if no date is fixed cause is to be shown on that very date unless time is taken by the complainant for the purpose.

8. Another case relied upon is the decision of the Madras High Court reported in 5 Madras High Court Reports Appendix p. 15. What happened in that case was that under the Code of 1861, an accused person appeared on a particular date before the Magistrate but the Magistrate was unable to take up the case. The Magistrate then left the Court making a verbal order on the accused asking him to appear on the following day. The accused did not turn up on the day so fixed and on that he was convicted u/s 174, I.P.C. It is clear from the proceedings that the accused when called upon to answer a charge u/s 174, I. P.C., admitted that he had received the Magistrate's verbal order but pleaded that he had some other case to attend to in another Court. The contention that was put forward before the Court was that the accused was absolved as there was no written order and no recognizance had been taken from him in pursuance of the verbal order. This contention was overruled. If in the present case there is anything to suggest that the complainant admitted that he knew of the order asking him to show cause on 23rd July the position would have been entirely different. As matters stand the facts are entirely distinguishable and the ruling has no bearing whatsoever on the points that arise in the present case.

9. The question then arises as to whether the part of the recommendation made by the Sessions Judge to the effect that the complainant should now be given an opportunity to show cause in pursuance of the order passed on 21st July 1928 should be accepted or not. Now it is quite clear from a perusal of Section 250, Criminal P.C., that the intention of the legislature is that it is the Magistrate who deals with the substantive case and makes the order of acquittal or discharge who has got to deal with the cause that is shown as to why compensation should not be awarded. The word "forthwith" used in Sub-section (1), Section 250, the words "the Magistrate" appearing in Sub-section (2) and (2-A) and the provisions contained in Sub-section 2 which regulate the amount of compensation as being dependent on the class to which the Magistrate who has dealt with the substantive case belongs unmistakably point to the conclusion that the legislature never intended that one Magistrate should deal with the case and make the order for calling upon the complainant to show cause and that another Magistrate may pass the order for compensation. Now in the present case an unfortunate circumstance has happened, namely, that the trial Magistrate Mr. Basanta Kumar Banerji has been transferred from the district. I say unfortunate, because as far as I can make out from the perusal of the order he passed by which he acquitted the accused in the case in which Rajaram was the complainant that there was very little justification for the complaint that was filed by the complainant, but the clear intention of the law makes it impossible to make an order directing that the matter should be dealt with by another Magistrate.

10. I am, therefore, of opinion that this reference should be accepted. The order for compensation against which it is directed should be set aside and it is further ordered that there should be no further proceeding under the section against the complainant. The

compensation, if paid, will be refunded to the plainant.