

(1915) 08 CAL CK 0006**Calcutta High Court****Case No:** None

Gangadhar Pradhan

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: Aug. 17, 1915**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 476
- Penal Code, 1860 (IPC) - Section 182, 211

Citation: 33 Ind. Cas. 626**Hon'ble Judges:** Walmsley, J; Chapman, J**Bench:** Division Bench**Judgement**

1. The petitioner laid an information at a Police Station to the effect that his house had been broken into at night. The Police investigated and reported that the charge was false. They requested that the petitioner be prosecuted u/s 182, Indian Penal Code. The report was received by the Sub-Divisional Magistrate. Upon the same date the Sub-Divisional Magistrate received a petition from the petitioner impugning the Police, report and asking that the persons whom he accused should be put on their trial. The Sub-Divisional Magistrate referred this petition to a Sub-Deputy Magistrate for enquiry and report, intimating that, if the Sub-Deputy Magistrate agreed with the view taken of the case by the Police, he might, submit a proceeding under Section 476, Code of Criminal Procedure, to the Sub-Divisional Magistrate for prosecution of the petitioner u/s 211, Indian Penal Code. The Sub-Deputy Magistrate examined the petitioner and his witnesses and held a local investigation. He also examined the Police Officer. He reported that the charge was false, and submitted a proceeding u/s 476 for the prosecution of the petitioner u/s 182 and Section 211, Indian Penal Code, to the Sub-Divisional Magistrate. The Sub-Divisional Magistrate directed that the case should be entered as false. The Sub-Divisional Magistrate thereupon tried the petitioner upon charges under Sections 182 and 211, Indian Penal Code. The trial ended in conviction.

2. It has been held by this Court that a petition such as that presented by the petitioner to the Sub-Divisional Magistrate is a complaint. The latter should, therefore, either have made over the Complaint to the Sub-Deputy Magistrate (not for enquiry and report but for disposal), or he should have examined the complainant himself, recorded reasons for distrusting the truth of the complaint, held the enquiry himself and then himself passed a formal order dismissing the complaint. The important points to notice are, first, that such a petition should always be treated as a complaint, and, secondly, that the petition should not be referred to another Magistrate for enquiry and report. If sent to another Magistrate, it must be sent for disposal. The other Magistrate can then, after enquiry and making a proper order dismissing the complaint, pass an order u/s 476. The Code does not permit a Magistrate to refer a complaint to another Magistrate for enquiry and report. An order u/s 476 made by the other Magistrate in such a case would be without jurisdiction. We have been somewhat particular in setting out the above details because the law on the subject is very imperfectly understood. In most Sub-Divisions the Magisterial staff consists of a Sub-Divisional Magistrate and a Sub-Deputy Magistrate and it is not unnatural that the Sub-Divisional Magistrate, knowing that he will have to try the charges under Sections 182 and 211 himself, should send the case in the first instance to the Sub-Deputy Magistrate for enquiry and report. The motive is not improper but the procedure does not have the sanction of the Code, and it frequently gives rise to legal difficulties.

3. It has been held, however, by a Full Bench of this Court in the case of Queen-Empress v. Sham Lall 14 0.707 that in such a case the Sub-Divisional Magistrate derives his jurisdiction to try the charge u/s 211 not only from the order, if any, u/s 476 but also from the Police report. There can be no doubt, therefore, that the trial was with jurisdiction.

4. The Sub-Divisional Magistrate would have exercised a better discretion if he had acted in the manner which we have indicated above. But it is a matter of discretion, not of statutory provision. There is no statutory provision requiring that such a petition shall be finally disposed of as a complaint before the prosecution u/s 211 commences. Now after conviction a breach even of a statutory provision can be remedied by the application of Section 537 of the Code of Criminal Procedure, which says that, subject to the provisions of the Code, no sentence shall be reversed on revision on account of any error, omission or irregularity in the proceedings before trial, unless a failure of justice has in fact been occasioned. The words "in fact" have at the last amendment been added to the section to emphasize the reality of this requirement. We are quite unable to say that any failure of justice has in fact been occasioned in the present case.

5. The Rule is discharged.