(1872) 04 CAL CK 0001

Calcutta High Court

Case No: Criminal Miscellaneous Case, No. 43 of 1872

In Re: Mathuranath Chuckerbutty and Others — APPELLANT

Vs

RESPONDENT

Date of Decision: April 17, 1872

Judgement

Richard Couch, Kt., C.J.
-(After stating briefly the facts of the case and the purport of the petition, continued):--Now, Mr. Woodroffe complained of the issuing of the warrant, and alleged that there was no evidence to justify its being issued. I think that we ought not to make any order now with respect to that. In the first place, the petition did not ask to have the warrant dealt with at all, nor did the order which was issued upon the petition direct cause to be shown with respect to the warrant. The warrant has long ago fulfilled all that it was required for, and it would be useless now to set it aside. Indeed, in the judgment of Phear, J., upon which Mr. Woodroffe strongly relied, it is stated that the force of a warrant of arrest is at an end when the prisoner is brought before the Magistrate. So also, with respect to the two orders of remand dated the 3rd of January and the 15th of February,--they have come to an end; the petitioners have appeared in pursuance of them; and a further remand has been made; and the real question is whether the remand which was made on the 26th of February, by which the case was postponed until the 12th of March, and the petitioners were put under recognizances to appear on that day, ought to be allowed to stand. The power under which the order was made is contained in s. 224 of the Code of Criminal Procedure, which provides that "if, from the absence of a witness, or from any other reasonable cause, it shall become necessary or advisable to defer the examination, or further examination, of witnesses, it shall be lawful for the Magistrate, by a written order, from time to time, to adjourn the enquiry, and to remand the accused person for such time as shall be deemed reasonable, not exceeding fifteen days."

2. Mr. Woodroffe relied very strongly, as it appeared to me, on a passage of the judgment of Phear, J., in the case of In the matter of the Petition of Surendra Nath Roy (1), in which

the learned Judge said that a Magistrate cannot lawfully commit to prison, or remand a prisoner who is before him without sufficient grounds; and in the complete absence of evidence, there can be no grounds. It appeared to me at the time that Phear, J., was there contemplating a case where there was no evidence at all, and that his language must be read with reference to such a case. On looking at the judgment, that seems to be so, because in a subsequent paragraph, he says:--"After the 2nd of November, the case changed. At that time evidence was produced before the Magistrate on which he could rightly, in the exercise of his judicial discretion, hold that the persons charged ought to be committed to prison, either to await trial, or for safe custody, during the adjournment of the enquiry." And when we refer to the statement of what took place in the case from time to time, it appears that, on the 2nd of November, a witness was partly examined. It is said "that, on the 2nd of November, after the first portion of the evidence of the said Nabin Roy was recorded, Mr. Munro directed that the witnesses who had then been sent by the Police should be kept in custody in Mr. Munro"s house." It would therefore seem that Phear, J., was of opinion that, if a witness had been even partly examined, the Magistrate would have power to remand; and the judgment does not support what it was quoted for by Mr. Woodroffe.

2. We have, however, to consider what is the power which is conferred upon the Magistrate by s. 224. It is said that if, from the absence of a witness, or from any other reasonable cause, it shall become necessary or advisable to defer the examination of witnesses, it shall be lawful for the Magistrate to adjourn the enquiry. It appears to me, looking at the language of this section that; if there is not a proper cause, a cause such as is described, a Magistrate has not power to adjourn the enquiry; it is not lawful for him to do it. A Magistrate is not at liberty, arbitrarily, or for any reason which he may think sufficient, to adjourn the enquiry; it is only to be in the cases mentioned. And although an improper adjournment of the enquiry by a Magistrate, an adjournment on a ground which could not be said to show that it was either necessary or advisable, might scarcely be said to be an error in the decision upon a point of law, or to involve any question of law, and s. 404 of the Code of Criminal Procedure might possibly not enable this Court to interfere, we have, by the 15th section of the Act under which the Court is established, a power of superintendence which enables us to deal with such a case. I think it enables us, where a Magistrate has adjourned an enquiry, when it was not lawful for him to do so under s. 224, to set aside the order. Here there was not the absence of a witness, or other reasonable cause, which made it necessary or advisable to adjourn the enquiry. The witness whose absence appears to have been given as a reason for the adjournment was the inspector who made the report. Assuming that, if called, he would have deposed to all the facts stated in that report, it appears that all that he could have proved would have been that the will was produced to him, and was afterwards returned; and that evidence being taken, there really would have been no evidence to justify the detention of the parties upon a charge of forgery of the will; it would really have been just the same as if there had been no evidence whatever against them.

3. The case appears--and it seems to me it was admitted by the government pleader; and also by Mr. Fergusson, who appeared for the prosecutor--to have been postponed in a manner which could hardly, even by them, be justified. There was not any evidence taken which could be made the foundation of a charge; and the Magistrate appears to have been influenced in the course which he took by the expectation that, after some time and by dint of enquiry, some evidence might be obtained. But a Magistrate is not justified in keeping parties under recognizances in the way in which he did on this occasion, possibly from soon after the 5th of July, when the warrant was issued, but certainly, from the 3rd of January, the day first fixed for the hearing, until the 12th of March, with this charge hanging over them, and remanding them from time to time in an illegal manner, the two previous remands having exceeded fifteen days. This is a case, I think, in which the Court may well exercise its power of superintendence, and set aside the last order of remand; and it seems to me desirable that Magistrates should understand that the power conferred by s. 224 is a power which is only to be exercised in cases which come really within the terms of that section. It is not a power conferred upon them to be exercised in an arbitrary manner, and not according to rule, but a power which they ought to be careful in exercising. Therefore, the order which we shall make is that the last order of remand, that of the 26th February, will be annulled. The consequence of which will be that the petitioners will not be liable to appear in accordance with the recognizances which they gave. If evidence is afterwards discovered, which would justify the charge of forgery being brought against them, the Magistrate is not precluded, by the order of which we now make from taking proceedings again.