

Munshi Isser and Another Vs Emperor

None

Court: Calcutta High Court

Date of Decision: April 22, 1910

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) â€” Section 195#Penal Code, 1860 (IPC) â€” Section 182

Citation: 6 Ind. Cas. 415a

Hon'ble Judges: Holmwood, J; Harington, J

Bench: Division Bench

Judgement

1. This is a Rule calling on the District Magistrate to show cause why the order complained of in this petition should not be set aside on the ground

that the complaint of the petitioner has not been disposed of according to law, and on the ground that the Magistrate had jurisdiction u/s 190,

Criminal Procedure Code, to refuse to take cognisance of the offence.

2. The facts are that the first petitioner laid an information stating that certain persons had formed an unlawful assembly and had assaulted the

informant and another person. This was investigated by the Police, but the petitioner was dissatisfied with the way in which the Police were

conducting the investigation and they complained to the Magistrate that the Police were not doing their duty. The Police reported that the

information given by the petitioner was false, and a sanction to prosecute the first petitioner for laying a false information u/s 182, Indian Penal

Code, and against the second petitioner for abetting that offence appears to have been granted by the Inspector of Police purporting to act u/s 195

of the Code of Criminal Procedure.

3. Now the petitioners put in a further petition asking that the evidence that they had to give in support of their charge might be taken. But that

petition was rejected by the Magistrate on the ground that there being this sanction to prosecute he must" take cognizance of the charge against the

petitioners for laying false information and he declined to go into the charge which they had made on the ground that they had had no opportunity

of proving the truth of it before the Police.

4. It has been laid down over and over again in this Court, that a person who lays an information is entitled to have his case determined before he

is called upon to answer the charge of laying false information. The decision is as long ago as the year 1887, Queen-Empress v. Sham Lal 14 C.

707 (F.B.), in which it was held that,--where a person had laid information before the Police, the Police reported it to be false, the informant

appeared before the Magistrate asking that his case, might be investigated and his witnesses summoned; this application being refused the

Magistrate after perusing the report directed the informant to be prosecuted u/s 211, Indian Penal Code--under these circumstances the

application to the Magistrate amounted to" a complaint within the meaning of Section 191, Criminal Procedure Code, and the Magistrate was

bound to enquire into it. That case seems to be on all fours with the present case. The petitioners had asked the Magistrate to take their evidence

and to investigate their complaint before going on with proceedings against them u/s 182, Indian Penal Code. In our opinion, they had a right to

have their case investigated and the truth or falsity of the charge determined in a proper tribunal. The Magistrate had no sort of business to refuse

to take their evidence.

5. There appears to be a further difficulty in the case, namely, that the Magistrate appears to have taken the case without the complaint of the

public servant to whom the false information was given, simply on the sanction of the Inspector of Police. That does not seem to us to be right, but

in any case the Magistrate had no business to refuse to determine the truth of the charge made by the petitioners. The order, therefore, must be set

aside and the petitioners be given an opportunity of proving their case before any proceedings are taken against them under Section 182 and

Section 182 read with Section 109, Indian Penal Code.

6. The Rule is made absolute.