

(1929) 08 CAL CK 0023

Calcutta High Court

Case No: None

Prabhat Chandra Adhikary and
Another

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: Aug. 30, 1929

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 480, 483
- Penal Code, 1860 (IPC) - Section 223, 228

Citation: 125 Ind. Cas. 853

Hon'ble Judges: George Clause Rankin, C.J; Patterson, J

Bench: Division Bench

Judgement

George Clause Rankin, C.J.

In this case it appears that while the Sadar Sub-Registrar of I Pabna was sitting on a judicial proceeding certain persons who were deed-writers 1 finding fault with a certain ruling which, he had given about the alteration of a figure in a deed came into his room and insulted him and caused interruption to his duty. The 1 Sub-Registrar made a complaint to this effect to the District Registrar who happened also to be the District Magistrate and at the end of his recital of the circumstances he says that the accused persons may be prosecuted u/s 223 of the Indian Penal Code. The District Magistrate apparently in his double capacity sent the case to the Sub-Divisional Officer for disposal and the Sub-Divisional Officer apparently summoned the accused u/s 228. In the meantime at the earliest possible moment the accused made an application to the Additional Sessions Judge taking several objections to the proceedings and this application was rejecter. Thereupon the accused obtained a Rule from this Court calling upon the prosecution to show cause why proceedings against the accused should not be quashed or why such other order should not be made as to this court may seam fit and proper--the ground upon which the Rule was issued being that the Sub-Divisional Officer had no

jurisdiction to issue process and that Section 416 of the Code of Criminal Procedure is not applicable to the case, It would appear that throughout the proceedings the case has been assumed to be one u/s 228 of the Indian Penal Code.

2. Mr. Chatterjee on behalf of the accused person calls our attention to the fact that s 228 deals with an offence which by the Second Schedule of the Criminal Procedure Code may be tried by the Court in which the offence is committed subject to the provisions of Chap. XXXV of the Code and this provision in the 8th column contrasts with the provision made in respect of an offence (which also comes u/s 480 of the Code of Criminal Procedure) e.g., u/s 175. In that case the Court by which the offence is triable is said to be the Court in which the offence is committed subject to the provisions of Chap. XXXV or the Court of the Presidency Magistrate or a Magistrate of the 1st and 2nd class. Beginning with the assumption that the Court by which the offence is triable is the Court in which the offence is committed, we are taken to Section 480 of the Code of Criminal Procedure. We find that that section refers first of all to a case where an offence is committed in the view of or presence of any Civil, Criminal or Revenue Court and in such a case a summary procedure is prescribed and the Judicial Officer who is insulted and interrupted in his duty may cause the offender to be detained in custody and then sentence the offender to fine not exceeding Rs. 200 and he is required to record the facts constituting the offence with the statement, if any, made by the offender. In default of payment of fine he may pass a sentence up to one month's rigorous imprisonment. If, however, the Court considers in such a case that this punishment is insufficient Section 482 empowers the Court to, record the facts constituting the offence with the statement of the accused if any and to forward the case to a Magistrate having jurisdiction to try the same and also empowers the Court to take security from the offender and in default of giving sufficient security to forward such person in custody to such Magistrate. Having regard to the fact that an offence u/s 228 is made triable by the Court in which the offence is committed subject to the provisions of Chap. XXXV it appears to me that prima facie the intention of the Legislature was that such a case should be dealt with under Sections 480 and 482. In this case the offence was committed before the Sub-Registrar and Section 84 of the Registration Act makes it clear that the Registering Officer is a public servant and that a proceeding under the Registration Act is a judicial proceeding for the purposes of Section 228. As the 8th column of the 2nd Schedule assumes that the offence is committed in a Court it may well be argued that there is no difficulty in holding that the Sub-Registrar is a Court for the purposes of the 8th column of the 2nd Schedule. It would appear that under the Registration Act of 1877 there was a clause in addition to what is now repeated in Section 111 of the Registration Act of 1908 to the effect that the Registrar should be and the Sub-Registrar should not be a Court within the meaning of the section which corresponds to Sections 480 and 482. It is, therefore, somewhat difficult to lay it down that by virtue of the Criminal Procedure Code the Sub-Registrar is a Court for the purposes of Sections 480 and 482 and we find that Section 483 appears to

leave the matter to the directions of the Local Government. In this case it appears that the Local Government has made no direction as regards the Registrar or the Sub-Registrar being a Civil Court within the meaning of Sections 480 and 482 and the result of that is that the offence u/s 228 if committed before a Sub-Registrar cannot be dealt with under Sections 480 and 482, that is to say, in the first instance by the Court in which the offence was committed. On my part there is a grave difficulty in saying that such an offence can be dealt with outside the provision made in Section 480 or 482 or in the absence of any directions by the Local Government, in saying that it can be dealt with by himself u/s 480.

3. After examining the matter it appears to me that it is almost hopeless to suppose that in the proceeding now started any final result can possibly be arrived at u/s 228. To my mind the intention of the Legislature is that a charge u/s 228 as distinct from a charge u/s 175 should be dealt with in a summary manner u/s 480 or else in a rather more elaborate manner provided by Section 482 and the latter section is confined to a case where the Court against whom the offence is committed has applied its mind on the question to decide if a fine of Rs. 200 will not be adequate. It has, however, been pressed upon us that in this case the Magistrate to whom the matter had been sent has tried it as a complaint in a summons case. But it does by no means follow that he will find in the end that Section 228 is the only section which can be applied. It will be open to him if he thinks fit to find that the accused is guilty of another offence triable as a summons case and Section 186 of the Indian Penal Code is suggested as a possible. alternative. In the circumstances, it is said that we should not quash the proceeding but let the Magistrate go on with it. In my judgment that contention must prevail. We think we ought to give direction in this case to the effect that u/s 228 proceedings should not be further continued but that the Magistrate's, proceedings should not be quashed because it is open to the Magistrate to consider the facts and come to a conclusion whether under any other section he should proceed.

4. With this direction the Rule is discharged.

Patterson, J.

5. I agree.