

Maniruddin Sarkar Vs Abdul Rauf

Court: Calcutta High Court

Date of Decision: April 18, 1912

Acts Referred: Penal Code, 1860 (IPC) " Section 211

Citation: 15 Ind. Cas. 482

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

Bench: Division Bench

Judgement

1. This was a Rule calling upon the District Magistrate of Mymensingh to show cause why an order for further inquiry in this case should not be

made and why the order for prosecution u/s 211 of the Indian Penal Code passed should not be set aside on detailed grounds which, after

considering the general allegations of the petitioner we ourselves formulated with some care. The learned Judge takes exception to the Rule on the

ground, that these reasons, which, as we have said, we ourselves formulated with some care, are not grounds which were urged before him and

this is an infringement of the spirit of the High Court's order that in revision, matters must first of all be urged before the first Court of revision. We

do not think it is so. The matter was put before us by the learned Vakil in precisely the same general way in which it was put before the learned

Judge, the principal arguments being, firstly, that on the evidence, further inquiry should be ordered, and, secondly, that even if such further inquiry

were not ordered, the evidence did not justify the proceeding u/s 211. We found that there were rather more intricate and important points

involved in this matter; and if the petitioner takes advantage of the superior intelligence and legal training of the learned Vakils of this Court, we

cannot see why he should be debarred from arguing even new matter in moving this Court. It may very well be that the learned Vakil in the

mofussil neither knew nor appreciated the points which might be raised in a case of this kind.

2. Now, coming to the merits of the matter; the learned Magistrate admits that he is out of Court, inasmuch as he did not record any reasons for

dismissing the complaint. It is an imperative provision of the law, which has been specially enacted in the later amendment of that law in Section

203, Criminal Procedure Code. The law says that in such cases, he shall briefly record his reasons for dismissing the complaint. There can be no

question of irregularity where the provisions of the statute are imperative and are directly disobeyed. We need not go into the other points

inasmuch as if the order of dismissal is without jurisdiction and altogether bad, there must be a further inquiry and there cannot be any proceeding

u/s 211 until such further inquiry has been made.

3. Having regard to the very unfortunate results, which a certain Circular of the Government of Bengal which is constantly being referred to before

us with regard to inquiries which ought to be made into the conduct of Police officers when they are charged with any offence, we wish to point out

that no Circular of the Government can authorize Magistrates to infringe or in any way alter the statute law. We have no doubt that this Circular

was never intended to cause any modification in the procedure laid down by the Code of Criminal Procedure, nor does it appear to us to

necessitate any alteration in the regular procedure of the Courts. The Government very properly have said that in their opinion when a Police

officer is charged with a serious offence, that offence, should be inquired into at once on the spot by a Magistrate of the first class. That does not

mean that the Sub-Divisional officer, if he has not got time to make the inquiry himself, can make use of the provisions of Section 202, Criminal

Procedure Code, and send it to a Subordinate Magistrate to hold a local investigation and examine both sides, and then afterwards treat it as if the

matter was still in his file. What the Circular means and what the proper procedure is, is that an experienced first class Magistrate should himself

hold the inquiry, if possible, and if he is to depute it to another first class Magistrate, that first class Magistrate should from the first have seizin of

the case and should investigate the case in any way he thinks proper and should decide it finally. But the view which some of the lower Courts have

taken of the Circular has resulted in their holding a vicarious trial by means of another Magistrate hearing both sides and then ordering prosecution

for bringing a false case without having disposed of the original complaint. All sorts of irregularities and failures of justice have followed in

consequence. We hope that after this expression of our opinion, the procedure adopted will in future be in conformity with law. In this case, we

think the best way to deal with it would be to summon the Sub-Inspector before the Magistrate having jurisdiction and call upon him to answer to

those offences which the investigating Magistrate has found there is reason to believe he committed, so as to save all further necessity for inquiries

u/s 202 or any other preliminary investigation.

4. The Rule is made absolute in these terms and there will be further inquiry in the manner we have indicated.