
(1873) 01 CAL CK 0002

Calcutta High Court

Case No: Miscellaneous Criminal Case No. 17 of 1873

The Queen

APPELLANT

Vs

Tarucknath Mookerjee

RESPONDENT

Date of Decision: Jan. 31, 1873

Judgement

Phear, J.

It appears that in this case, Tarucknath Mookerjee was, in consequence of some knowledge or information, obtained by the Magistrate, brought before the Magistrate under a warrant to answer a charge therein specified as a charge made under s. 200 of the Indian Penal Code. After taking evidence, the Magistrate was of opinion that that charge was not made out, and that the evidence did not justify his framing any other charge against the accused. Accordingly he discharged him from custody. The Judge, exercising the powers given to him by s. 296 of the new Criminal Procedure Code, has directed the Magistrate to commit Tarucknath Mookerjee for trial for forgery. I think that this order of the Judge is bad for two reasons.

2. In the first place, it is too vague and indefinite for the Magistrate to act upon. It should have specified the document which the Judge considered to have been forged, and also the particular in regard to which it was forged; otherwise I do not understand how the Magistrate, who in this matter will have to act in a ministerial capacity only, can properly frame his commitment upon any specific charge at all; and I must further say that having regard to the evidence which was before the Magistrate, and which has come up to us on this occasion, I cannot perceive in what way any charge of forgery of a document can be made out at all.

3. And, secondly, I think the order is bad, because it directs that Tarucknath Mookerjee be committed for trial for having committed the offence of forgery, that being an offence of which he had not been in any form accused before the Magistrate, The section, or that portion of the section (296) which is applicable to the present matter, runs thus:--
"Provided that, in Session cases, if a Court of Session or Magistrate of the district considers that a complaint has been improperly dismissed, or that an accused person has

been improperly discharged, by a Subordinate Court, such Court or Magistrate may direct, the accused person to be committed for trial." I read this to mean, may be committed for trial upon that matter of which he has been, in the opinion of the Judge, wrongfully discharged by the Magistrate; in other words, committed for trial for some offence with which he was substantially charged in the complaint, or which was specified in the warrant, or which was framed as a formal charge by the Magistrate at the preliminary hearing. Unless the powers of the Judge under this section to commit for trial be thus limited, it seems to me that a very strange result would follow namely, that a man might be committed by the Judge for trial of an offence of which he had never been accused, or never even heard a word, as indeed would have happened here, until he was apprehended under the Judge's commitment. And as the Criminal Procedure Code seems to have been carefully framed with a view to provide that no one shall be committed for trial without having previously had a fair opportunity of meeting the charge upon which he is to be committed, I think this result I have mentioned can hardly have been contemplated by the Legislature; and I do not think the words when reasonably read with the context do give the Judge so extensive a power as that which is now sought for him. For these two reasons I think the order of the Judge should be set aside.

¹ Subordinate collector of rents or Shanbogue