

(1905) 08 CAL CK 0024
Calcutta High Court
Case No: Rev. No. 747 of 1905

Haibut Khan

APPELLANT

Vs

The Emperor

RESPONDENT

Date of Decision: Aug. 18, 1905

Judgement

1. This is a rule, calling upon the District Magistrate to show cause why his order sanctioning the prosecution of the applicant, under sec. 211, I. P. C, and the order of the Deputy Magistrate committing the applicant to the Court of Sessions for trial, should not be set aside. The facts of the case are these. The applicant made a complaint of arson before the Police. His case was reported false by them. The District Magistrate then ordered an enquiry by the Deputy Magistrate. The Deputy Magistrate after making an enquiry, also considered the complaint to be false. The case then came before the District Magistrate, who passed final orders on the Police report, namely, "enter false sec. 436 I. P. C. Prosecution under sec. 211, I. P. C, sanctioned. To Babu M. N. Mookerjee for trial." The Deputy Magistrate, after examining the witnesses in support of the prosecution, committed the applicant to the Sessions under sec. 211, I. P. C.

2. It appears to us that the order of the District Magistrate is bad, and that we must quash the proceedings in this case. It is true that the applicant made no complaint in this case to the District Magistrate; and so the proceedings are not defective on the ground that the complaint had not been finally disposed of under sec. 203. It seems to us that the order made by the District Magistrate is bad, because it was one not passed with regard to a matter which had come to his cognizance in the course of a judicial proceeding. If he had made an enquiry into the truth or falsity of the applicant's complaint, he might have had powers under sec. 476, C. Cr. P., or, seeing that the enquiry was made by the Deputy Magistrate, the Deputy Magistrate might have had power to order the prosecution of the applicant. But it is not legal for a District Magistrate to order a prosecution when the enquiry has been made by another officer and the matter has not come before him in the course of a judicial proceeding. The Magistrate himself says the order was passed under sec. 195, C. Cr.

P. The Deputy Legal Remembrancer, however, admits that this is not so, and that the complaint having been made to the Police, it was not necessary for the District Magistrate to sanction the prosecution under sec. 195, C. Cr. P.

3. We think that this view is correct; and, moreover, we do not regard this order for prosecution as a sanction under sec. 195, C. Cr. P. Clearly it was an order purporting to be made under sec. 476, C. Cr. P. We therefore make the rule absolute and set aside the order of the District Magistrate sanctioning the prosecution of the applicant under sec. 211, I. P. C, as well as the order of the Deputy Magistrate committing the applicant to the Court of Session.