(1929) 02 CAL CK 0073

Calcutta High Court

Case No: None

Nawsher Ali Pramanik	APPELLANT
Vs	
Hazratulla Pramanik	RESPONDENT

Date of Decision: Feb. 28, 1929

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 203, 436

Citation: 119 Ind. Cas. 376

Hon'ble Judges: Zahhadar Rahim Zahid Suhrawardy, J; Graham, J

Bench: Division Bench

Judgement

Zahhadar Rahim Zahid Suhrawardy, J.

This Rule is directed against an order of the District Magistrate of Bogra ordering further enquiry into the complaint preferred by the opposite party before the Sub-Divisional Officer of Bogra. It appears that the Sub-Divisional Officer on receipt of the complaint ordered an enquiry by the local President. On receipt of the report of the President he examined two witnesses for the prosecution and disbelieving the complainant''s story dismissed the case u/s 203 of the Criminal Procedure Code. The complainant moved the District Magistrate and he passed the following order. "I think there should be a further enquiry into the complaint. Further enquiry ordered and the papers sent to Sub-Divisional Officer for favour of dealing with it according to law." In support of this Rule Mr. Talukdar has raised several grounds. The first is that the accused should have been given notice before further enquiry was ordered against him. This contention he has not been able to support on the law as laid down in Section 436, Criminal Procedure Code. But he has invoked the desirability of issuing a notice upon an accused person in every case where an order is passed against him. We do not think that we should accede to such a proposition of law. Section 436 as it stands by the Amending Act of 1923 clearly makes a distinction between a case in which a complaint is dismissed u/s 203 and the case in which the accused is discharged u/s 253 or some other section. In the latter case it is

now provided in accordance with the general opinion of all the High Courts that notice should be given to the accused as he was present at the trial Court and no order ought to be passed in his absence by the Court in revision. But when the order is passed u/s 203 not only has the accused no right under the law to appear either before the trial Court or before the Revision Court; but it has been held in several cases that the accused should not be allowed to appear at that stage: Balai Lal v. Pasupati Chatterjee 35 Ind. Cas. 828 : 25 C.L.J. 606 : 21 C.W.N. 127 : 17 Cri.L.J. 396 and Chandi Charan Mitra v. Manindra Chandra Roy 72 Ind. Cas. 173 : 27 C.W.N. 196 : 36 C.L.J. 414 : AIR 1923 Cat. 198 24 Cri.L.J. 333. In this case we are told that the accused had appeared at the trial Court. There is nothing on the record that he did, as no vakalatnama was filed on his behalf. But it appears from an examination of the witnesses of the complainant that they were cross examined, it does not appear by whom. If the Magistrate allowed the accused to appear at that stage to cross-examine the witnesses he acted illegally and this illegal act of the Magistrate does not create a right in the accused to appear at every stage of the proceeding. In some cases no doubt it has been held that even if in a case where the complaint is dismissed u/s 203 it is desirable to allow the accused to appear before an order is passed u/s 436. But these cases were decided before the amendment of the section; and as has been rightly observed by Sir John Woodroffe in his well-known edition of the Criminal Procedure Code that the Court in this case as in some other case has legislated in view of certain general principles. I do not think that they have any right to legislate, however desirable it may be on principle. This ground must fail. Some argument has been advanced to us on the merits. But I do not think that I ought to interfere at present on that ground.

2. I should have preferred that the District Magistrate gave his reasons for ordering a further enquiry. But on reading the order passed by him it appears that he was right in passing the order because the trial Court had not tried the case according to law which may mean that it had wrongly allowed the accused to appear before it. The learned District Magistrate has submitted an explanation in which he has given reasons for ordering an enquiry into the matter. This Rule is discharged.

Graham, J.

3. I agree that the Rule should be discharged. In my opinion there is no substance in the contention which has been put forward on behalf of the petitioner. It is well-settled that at such an enquiry the accused has no locus standi, and he certainly cannot claim to be entitled as of right to notice where an application is made for further enquiry. That this is so, is plain inter alia from the terms of the proviso to Section 436, Criminal Procedure Code. That proviso was added by Act XVIII of 1923 and it expressly provides that in the case of discharge such notice shall be given. By implication it seems to be reasonably clear that is case of further enquiry no such notice is required. If the Legislature had intended to provide for such notice it would presumably have said so in clear terms.