

Mohammad Ataullah

Vs

Ram Saran Mahto

Criminal Appeal No. 89 of 1976

(O. Chinnappa Reddy, Baharul Islam JJ)

23.02.1981

JUDGMENT

CHINNAPPA REDDY, J. -

On June 26, 1968, Ram Saran Mahto filed a complaint against the appellant and others before the Sub-Divisional Magistrate, Arrah. On April 5, 1969, the Sub-Divisional Magistrate directed the Executive Officer, Samastipur Municipality who, we are told, is a Magistrate, to make an investigation under Section 202, Criminal Procedure Code and submit a report. It is not known what investigation was made by the Executive Officer, Samastipur Municipality but he submitted a critic report to the effect that a prima facie case was made out against Deepak Kumar Chaudhary, Ataullah and Noor Mohammad and no case was made out against Jagdish Kumar Chaudhary, Baleshwar Kumar Chaudhary and Birendra Chaudhary. The whole of the report may be usefully extracted here :

# Letter No. 695 Date 29-4-74 From : H. B. P. Singh, Executive officer, Samastipur. To The Sub-Divisional Officer, Samastipur. Sub : Enquiry report into the complaint petition of Sri Ram Saran Mahto Sir,##

I have enquired into the matter. From my enquiry a prima facie case is made out against the following persons only.

1. Deepak Kumar Chaudhary.
2. Ataullah.
3. Noor Mohammad.

No case is made out against Shri Jagdish Chaudhary, Shri Baleshwar Chaudhary and Shri Birendra Narain Chaudhary.

# Yours faithfully, Sd/- H. B. P. Singh, 29-4-74 Executive Officer.##

It is seen that the report of the Executive Officer, Samastipur Municipality mentions no detail of the investigation made by him and refers to no statement of any witness examined by him or any document perused by him. The report was not accompanied by any other document. On receipt of the report the learned chief Judicial Magistrate, Samastipur took cognizance of the case on July 25, 1974, and issued process to Deepak Kumar Chaudhary, Ataullah and Noor Mohamad. The appellant thereupon moved the High Court under Section 482 and 483 of the Code of Criminal Procedure to

quash the order of the learned Chief Judicial Magistrate taking cognizance of the case. The High Court rejected the petition and the appellant has preferred this appeal, by special leave of this Court. It was submitted on behalf of the appellant that the learned Sub-Divisional Magistrate had directed an investigation under Section 202 presumably because he was prima facie not satisfied that the complaint and the sworn statement of the complainant justified the issue of process to the accused. Having directed an investigation under Section 202, what was there in the report of investigation to justify the issue of process to the accused, it was asked. The report of investigation merely set out the conclusion of the Executive Officer, Samastipur Municipality, without mentioning or referring to any material which would justify the issue of a process. It was, therefore, said that the Chief Judicial Magistrate was wrong in issuing process, on the basis of the report of investigation made by the Executive Officer, Samastipur Municipality. We are afraid the submission has to be accepted. There is no answer to it. As already pointed out by us the Executive Officer, Samastipur Municipality, in his report, merely expressed his opinion but mentioned no detail of the investigation made by him and referred to no witness examined by him or any document perused by him. Therefore, when the Chief Judicial Magistrate took cognizance of the case and ordered issue of process against the accused there was no additional material before him except what was already there when he ordered an investigation under Section 202, Criminal Procedure Code. Obviously the learned Chief Judicial Magistrate, without any reference to any further material, took cognizance of the case and ordered the issue of process to the accused merely on the basis of the opinion expressed by the Executive Officer, Samastipur Municipality. That he was not right in doing. The order of the learned Chief Judicial Magistrate may now deal with the complaint in accordance with law. The appeal is allowed in the manner indicated.

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