

CALCUTTA HIGH COURT

Baidya Nath Singh

Vs

Muspratt

(Mitter and Grant , JJ.)

07.09.1886

JUDGMENT

Mitter and Grant, JJ.

1. This rule was issued on the 17th of August last upon the Magistrate to show cause why his order, dated the 21st of July last, dismissing the complaint of the petitioner who obtained this rule, should not be set aside. That order of the Magistrate came to be passed under the following circumstances. The petitioner filed a petition before the District Magistrate on the 5th of July last complaining of certain offences having been committed by the three accused persons. He was examined on the same date, and after recording his examination, the Magistrate passed the following order on the same date: "Forwarded to the Assistant Superintendent, who is requested to state the circumstances under which the house of Gopi Mohun Baboo was searched, if it was searched at all." It may be mentioned here that the Assistant Superintendent who was requested to state the circumstances was the accused person No. 3. Upon that the Assistant Superintendent submitted his report, we are informed, on the 11th of July. Although that report is part of the record of this case, and although the record was sent for, the report has not been appended to the record that has been sent up. That the report is part of the record appears from the final order passed in this case, to which we shall refer hereafter. On that report being submitted on the 13th of July, the Magistrate recorded the following order: "The search complained of was clearly within the power of the Police, and from the report submitted by the Assistant Superintendent it does not appear that it was improperly conducted. A prima facie case of theft had been made out, of which the accounts appeared to disclose an intention on the part of the accused to use violence or force, if necessary, for the accomplishment of his purpose; and, under these circumstances, a search to discover if there were arms without license or even lathis in unusual number was reasonable. The complaint will be filed." Then on the 21st of July the Magistrate dismissed the complaint, and he did so apparently under Section 203 of the Criminal Procedure Code, although that section is not mentioned in the order itself. The order dismissing the complaint is to the following effect: "The complaint does not disclose any offence as having been committed. The search made was in accordance with the provisions of the law, and Assistant Superintendent was

acting within his powers in making the search. As to the other parties named, it appears from the Assistant Superintendent's report that they merely accompanied him as witnesses. Complaint is dismissed." This is the order with reference to which this rule was obtained. It was passed, as already stated, under Section 203 of the Criminal Procedure Code. That section gives very large powers to the Magistrate to dismiss a complaint without issuing a process at all against the accused persons, but certain conditions are laid down in the chapter in which that section occurs, and those conditions must be strictly fulfilled in making an order under Section 203. Section 200 provides that, "a Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate." Then Section 201 provides the procedure to be adopted by the Magistrate if he finds himself not competent to take cognizance of the case. Section 202 lays down that "if the Chief Presidency Magistrate, or any other Presidency Magistrate whom the local Government may from time to time authorize in this behalf, or any Magistrate of the first or second class, sees reason to distrust the truth of a complaint of an offence of which he is authorized to take cognizance, he may, when the complainant has been examined, record his reasons for distrusting the truth of the complaint, and may then postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself, or direct a previous local investigation to be made by any officer subordinate to such Magistrate, or by a police officer, or by such other person, not being a Magistrate or police officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint." Then comes Section 203 which says: "The Magistrate before whom a complaint is made, or to whom it has been transferred, may dismiss the complaint if, after examining the complainant and considering the result of the investigation (if any) made under Section 202, there is in his judgment no sufficient ground for proceeding." Reading all these sections together, it seems to us that a Magistrate may dismiss a complaint under Section 203 on any one of these three grounds. In the first place under Section 203 if he, upon the statement made by the complainant, reduced to writing under Section 200, finds that no offence has been committed; in the second place, if he distrusts the statement made by the complainant he may also dismiss the complaint; and in the third place, if he distrusts the complainant's statement, but his distrust is not sufficiently strong to warrant him to act upon it, he may direct a further enquiry as provided in Section 200, and he may either conduct this inquiry himself or depute a subordinate officer to conduct it. These are the three cases in which a Magistrate has power to dismiss a complaint under Section 203 and refuse the issue of process. It is clear to us that under Section 202 if he distrusts the statement of the complainant, he must record his reasons. In any case he is bound to record his reasons for distrusting the complaint. That appears to us to be quite reasonable. under Section 437 of the Criminal Procedure Code this Court is vested with the power of revising the order passed by Courts subordinate to it under Section 203, and it would be impossible for this Court to consider whether the discretion vested in the Magistrate under Section 203 had been properly exercised, unless the Magistrate recorded his reasons for dismissing the complaint under Section 203. Now in this case it appears to us that the grounds upon which the Magistrate has dismissed the complaint are such as would warrant this

Court in revising the order made by him. The first ground is, that the complaint does not disclose that any offence has been committed. We have read the statement in the complaint, and we think that if that statement is believed and not distrusted, there was sufficient foundation for some kind of criminal charge against the accused persons. Then the order goes on to say : The search made was in accordance with the provisions of the law, and the Assistant Superintendent was acting within his powers in making the search. As to the other parties named, it appears from the Assistant Superintendent's report that they merely accompanied him as witnesses." The Magistrate in recording these reasons has entirely proceeded upon the report of the Assistant Superintendent. That appears clear because he asks for that report, and on that report being submitted on the 11th of July, he recorded the order, extracted above, on the 13th, and in his final order he refers to that report and acts upon it. Now it seems to us that the Magistrate acted illegally in calling for a report from the Assistant Superintendent, who in this case was one of the accused persons, and it was never contemplated that under Section 202 any report could be called for from an accused person if that accused person happened to be an officer subordinate to the Magistrate. Upon this irregularity alone we think that the order of the Magistrate refusing to entertain the complaint must be set aside. We therefore set it aside and return the record to the Magistrate, and direct that he proceed with the case in accordance with the provisions of the law. His procedure up to the time of recording the complaint was quite regular and legal, and he must take up the case at that stage. Taking up the case at that stage, he will proceed to deal with it in accordance with the provisions of the Criminal Procedure Code.