

BOMBAY HIGH COURT

Dhondu Bapu Gujar

Vs

Emperor

(Patkar, J.)

14.03.1927

JUDGMENT

Patkar, J.

1. In this case, the complainant, Kalu Bhila Kunbi, lodged a complaint, against forty-seven persons for having defamed the complainant in their petitions to the Assistant, Collector. W.D. The learned Magistrate, without taking any evidence in the case, applied Excep. 8 to Section 499 of the Indian Penal Code to the case of the accused and dismissed the complaint under Section 203 of the Criminal P.C. The District Magistrate directed, further enquiry under Section 436. The order of the District Magistrate ordering further enquiry is challenged before us on two grounds, firstly, that no notice was given to thirteen of the accused ; and, secondly, that no reasons have been given by the District Magistrate in support of his order for further enquiry.

2. With regard to the first point, a proviso to Section 436 is newly added. Though under the old Code, it was not necessary that there should be a notice before ordering further enquiry it was held that the Court , did not exercise a proper discretion in ordering a further enquiry in the case of accused persons who were discharged by the Magistrate. Section 436 enables a District Magistrate to make an order for further enquiry into any complaint, which has been dismissed under Section 203 or Sub-section (3) of Section 204, or into the case of any person accused of an offence, who has been discharged. The newly added proviso, however, is confined to the case of any person, who has been discharged. It has been held in the case of Emperor v. Gajraj Singh , that where a complaint is dismissed under Section 203 or Section 204 of the Criminal P.C, no notice to the person against whom the complaint is made is necessary before further enquiry into the case can be ordered. The judgment of the Allahabad High Court is based on the ground that under the old Code the Courts were unanimous that in the case of the dismissal of a complaint under Section 203 notice was not necessary, and the amendment had, in the opinion of the Court, left those rulings untouched, for it was confined to the case of discharge only and did not apply to the dismissal of a complaint either under Section 203 or Section 204. We agree with the view

of the Allahabad High Court.

3. In the present case, there were forty-seven accused before the Magistrate and thirteen of the accused were not served with notice by the District Magistrate when he ordered further inquiry. The mere fact, however, that thirteen of the accused were not served; with notice would not invalidate the order of the District Magistrate ordering further inquiry.

4. As regards the second point, the Magistrate dismissed the complaint under Section 203 without taking any evidence in the case, and applied Excep. 8 to Section 499 to the case of the accused. Under Section 105 of the Indian Evidence Act, the burden will be on the accused to show that they made these allegations in good faith, and the Magistrate, therefore, ought to have taken the whole evidence and then passed a proper order. If the Magistrate in this case had taken evidence on behalf of the prosecution and on behalf of the accused, and passed a proper order for discharge, the order of the District Magistrate ordering a further enquiry without giving reasons might have stood on a different footing, We do not think that, under the circumstances of this case, there are adequate grounds for interfering with the order of the District Magistrate. We think, however, that the prosecution of forty-six accused is not desirable. Mr. Kane, on behalf of the complainant, has undertaken to proceed against six of the accused only.

5. We, therefore, order that the complainant should, within a fortnight after the record reaches the lower Court, select six of the accused, against whom he wishes to proceed. On that undertaking we decline to interfere with the order for further enquiry. Rule discharged.