

BOMBAY HIGH COURT

J.D. Boywalla

Vs

Sorab Rustomji Engineer

(John Beaumont, Kt., C.J. Macklin, J.)

31.01.1941

JUDGMENT

John Beaumont, Kt., C.J.

1. This is an application in revision made by one J.D. Boy-walla, who asks us to quash a complaint lodged against him under Section 211 of the Indian Penal Code. The case is a good illustration of the way in which the time of the criminal Courts and of the police in Bombay is wasted by the foolish behaviour of some of its citizens.

2. The facts are that Mr. Boywalla had got a motor car, as I understand, for the first time in his life, and he took the motor car to a garage, which belonged to the opponent, either alone or with partners, in order to have it painted and repaired. His case is that when he went to get his car back from the garage, the opponent told him that the battery had not been properly charged, although Mr. Boywalla says that he had recently had it charged. However, the opponent said that the battery required to be recharged, and that it had been recharged by him, for which a sum of Rs. 3 was payable, and Mr. Boywalla paid the three rupees. But then he found that his car would not start. The opponent in the meantime had gone out and was not available. So, after waiting for about an hour, Mr. Boywalla jumped to the conclusion that he had been cheated by the opponent in respect of the three rupees. He assumed that because the car would not start, the battery had not been charged as the opponent alleged, though any practical motorist knows that there are many other reasons which may account for a motor refusing to start. So Mr. Boywalla rushed off to the police and lodged a complaint against the opponent of cheating in respect of these three rupees, his case being that he had been induced to part with the money by the opponent's fraudulent and false statement that the battery had been charged. The police authorities, instead of telling him to go away and not to be silly, started investigation and arrested the opponent and released him on bail, and subsequently applied to the learned Magistrate of the Girgaon Police Court to have the bail enlarged, and an order to that effect was made. The police then investigated further into the matter, and eventually on Miay 29 the Police Sub-Inspector made a

report to the learned Magistrate saying: I beg to place before Your Worship the marginally noted accused person who was arrested by the Police on 8-5-40 at about 2-0 P.M. u/s 420 of I.P. Code. He was released on bail the same day and his bail period was extended till to-day. As however no offence has been disclosed against him it is requested that he be discharged and his bail bond cancelled. On that the learned Magistrate passed an order: Accused discharged. Bail bond cancelled. Deposit to be returned.

3. Subsequently the opponent filed a case against Mr. Boywalla under Section 211 of the Indian Penal Code, which provides that whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished. Obviously it may be difficult to prove that Mr. Boywalla knew that there was no just or lawful ground for his proceeding. I very much doubt whether he had the slightest idea as to what was necessary in order to secure a conviction for cheating under Section 420 of the Indian Penal Code. His conduct in lodging the complaint was, I think, most irresponsible, but whether an offence could be proved under Section 211 is problematical.

4. However, the point of law taken on behalf of Mr. Boywalla is that it is the Magistrate who must lodge the complaint under the provisions of Section 195(b) of the Criminal Procedure Code. That section provides, so far as material, that no Court shall take cognizance of any offence punishable under Section 211 of the Indian Penal Code, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court. The complaint here is not lodged by the learned Magistrate, and I should think it very unlikely that the learned Magistrate would consent to lodge a complaint in such a trivial matter.

5. The question, however, is whether the making of this alleged false charge was committed in, or in relation to, a proceeding in Court. It is contended on behalf of the opponent that the order made by the learned Magistrate extending bail, and subsequently discharging the accused and cancelling his bail bond, was an administrative order, and not a judicial order, since the Magistrate never considered the merits of the case. I am quite unable to accept that argument. Indeed, it is a novelty to me to hear it suggested that there is any authority which can make an administrative order discharging an arrested person from judicial custody. This man had been arrested, and released on bail, and, in my opinion, the only authority which could release him from custody, or from being on bail, was a Magistrate or Judge acting judicially, and I have no doubt whatever that the learned Magistrate acted, and intended to act, as a Magistrate in a judicial capacity.

6. But then it is contended both by the opponent and by the learned Government Pleader that there is no power under the Criminal Procedure Code for a Magistrate to discharge an arrested person, without having taken cognizance of the case, on a mere report of a police-officer, and it is said that here the learned Magistrate had not taken cognizance of the case. The logical result of that argument, if it were to prevail, would be, not that the order of discharge was an administrative order, but that it was an invalid order, and the accused still remained on bail. In my opinion, however, there is no force in the argument.

7. Under Section 190 of the Criminal Procedure Code a Presidency Magistrate may take cognizance of any offence upon receiving a complaint of facts which constitute such offence, or upon a report in writing of such facts made by a police-officer, or upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed. Section 204 of the Criminal Procedure Code provides that if, in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then he can proceed either by summons or warrant as therein mentioned. The wording of that section seems to suggest that there may be a case in which the Magistrate has taken cognizance, but in which, in his opinion, there is no sufficient ground for proceeding; and it is quite true that the Criminal Procedure Code does not provide what is to happen in that case. But it seems to me to follow by necessary implication that the Magistrate must in such a case discharge the accused. If he is not prepared to proceed further, and the accused is under arrest and before him, he must necessarily discharge him, There is no other course open to the Magistrate; the accused cannot be left indefinitely in custody or on bail. There is nothing that I know of in the Procedure Code which suggests that such a course is not legal. When, in the case of a man who has been arrested and released on bail the police-officer reports that there appears to be no case, and invites the Magistrate to discharge the man, the Magistrate is not bound to act upon the police view. He can undoubtedly say: "I will have a further inquiry in this matter. I think the police are wrong in suggesting that the accused should be discharged." And he may direct further investigation. On the other hand, I have no doubt that he may say: "I have no reason for thinking that the report of this police-officer, who is a responsible person, is wrong, and if he tells me that after investigation he thinks there is no case, I will do as he suggests and discharge the accused." But in either case the Magistrate is taking cognizance of the case. He cannot discharge the accused, or direct a further investigation, unless he first takes cognizance. The learned Magistrate in discharging the accused is making an order similar in character to the order which he can make under Section 208 of the Criminal Procedure Code, where he acts on a report of the police or an investigation undertaken at his request. If after considering the report he thinks that there is no sufficient ground for proceeding, he may discharge the accused. Although the Code does not expressly so provide, I have no doubt that a Magistrate can act upon the report of a

police-officer as to the result of a police inquiry undertaken under the Code in accordance with the powers conferred upon the police, and can discharge an accused person without further inquiry. But in such a case the order of the Magistrate is a judicial order, which "would be open to review by this Court.

8. In my opinion, therefore, the alleged false charge in this case was made in, or in relation to, a proceeding in Court. It resulted in the man being actually arrested and brought before the Magistrate and dealt with by the Magistrate. Therefore, the complaint must be that of the Magistrate, and as there is no such complaint, the proceedings must be quashed.

Macklin, J.

9. I agree.