

13 B. 590 (F.B.).

## FULL BENCH.—CRIMINAL REVISION.

Before Sir Charles Sargent, Kt., Chief Justice, Mr. Justice Bayley,  
Mr. Justice Scott, and Mr. Justice Nanabhai Haridas.

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IN THE MATTER OF THE PETITION OF GANESH NARAYAN  
SATHE.\* [28th January, 1889.]

*Criminal Procedure Code (Act X of 1892), s. 203—Dismissal of a complaint—Magistrate's discretion—Nature and extent of such discretion—Sufficient ground, meaning of—Complainant's motive.*

A Magistrate cannot dismiss a complaint under s. 203 of the Code of Criminal Procedure (Act X of 1892), until he has examined the complainant to see whether there is *prima facie* evidence of a criminal offence. In exercising his discretion under s. 203, the Magistrate ought not to allow himself to be influenced by a consideration of the motive by which the complainant may have been actuated in moving in the matter, nor by any other consideration outside the facts which are adduced by the complainant in support of his complaint.

[F., 16 B. 580; 25 M.L.J. 510; Rat. Unr. Cr. Cas. 549 (550); Rat Unr. Cr. Cas. 562; Rel., 11 Cr. L. J. 205=5 Ind. Cas. 714=4 P.W.R. 1910 Cr.; R., 13 B. 600 (604); 16 B. 661 (669); 9 Bom. L. R. 742 (743); Rat. Unr. Cr. Cas. 669 (670); Rat. Unr. Cr. Cas. 776 (778); Rat. Unr. Cr. Cas. 786 (787).]

[591] ONE Hanmantrao Jaghirdar was tried and convicted by the District Magistrate of Poona of taking bribes under ss. 162 and 163 of the Indian Penal Code. In the course of his trial several Mamlatdars gave evidence, either as complainants or as witnesses for the prosecution, admitting that they had obtained promotions in the service, and transfers from one district to another, by means of bribes given to Hanmantrao as a reward for exercising in their favour his personal influence with Mr. A. T. Crawford, Revenue Commissioner, C.D.

After the conviction of Hanmantrao, and pending the inquiry before a Special Commission into the charges of corruption brought against Mr. Crawford, one Ganesh Narayan Sathe lodged a complaint in the Court of the District Magistrate of Poona, charging Balkrishna Govind Sindekar and five other Mamlatdars, who had given evidence at the trial of Hanmantrao, with abatement of taking bribes, under ss. 161, 162, 163, 107, 108, and 109 of the Indian Penal Code. The complaint was in the following terms:

"In the Court of the District Magistrate, Poona.

"Ganesh Narayan Sathe, complainant.

"1. Mr. Balkrishna Govind Sindekar; 2, Mr. Balvantrao Narayan Dabir; 3. Mr. Yadavrao Krishna Sathe; 4, Mr. Mahadev Keshav Kumtekar; 5. Mr. Ramchandra Gopal Javarkar; 6. Mr. Narayan Shamrav Satbhai,—accused.

"Under ss. 161, 162, 163, 107, 108, and 109 of the Indian Penal Code.

"1. From the facts which have been recorded in the two cases disposed of by this Court, in which the said Mr. Sindekar and Mr. Dabir were complainants as against Mr. Hanmantrao Jaghirdar, it has come to light that the said six persons have undoubtedly committed the offence described in the said sections of the Indian Penal Code.

"2. The reasons, based upon the broad principle of the requirements of public justice, which have induced the authorities concerned to proceed

\* Criminal Revision, No. 495 of 1888.

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against the said Mr. Hanmantrao, are fully and equally applicable to the misconduct of the said six accused [592] persons, and, as such, public justice and equity loudly call for a rigid and impartial execution of the penal laws of the land by at once proceeding against the said persons.

"3. These persons have all most elaborately proved to the satisfaction of this Court their own guilt under the said sections, and for this reason no further proof or evidence is necessary for proving this complaint beyond simply recording in this case verified copies of the statements of these parties recorded in the said case of Mr. Hanmantrao. I, therefore, pray that such verified copies of those depositions should kindly be filed and recorded in this case.

"4. It is clear, from the proceedings of the said case of Mr. Hanmantrao, that these parties have taken the initiative in the commission of the offences of which Mr. Hanmantrao has been convicted, and that, as such, they are in reality the principal offenders; and any one in India, and in the whole of the civilized world, will naturally look upon these proceedings, in which Mr. Hanmantrao alone has been treated as an offender, to the entire exclusion of these persons, as contrary to the principles of equity and even-handed justice.

"5. There is another point which I beg respectfully to mention here. The moneys alleged to be given by these persons to Mr. Hanmantrao, have nothing whatever to do with their official position. It is only when a Government servant himself receives an illegal gratification that the sanction of Government for his prosecution is necessary. But here the case is quite the reverse; and, as such, these persons, for the offences which they have thus committed, can legally be tried at the instance of any one—even a mere private individual.

"6. Moreover, even a cursory perusal of the said proceedings leads any one to believe that these persons have been assured by the Government of Bombay and its officers that they are not to be tried for the said offences. But whatever may be the nature and terms of any such assurances, if such promise has at all been given to them by those in power, looking at the existing law, there does not appear any such provision which can possibly authorize Government to exercise any such power. [593] On the contrary, the law most distinctly lays down that the terms of pardon can only be offered to criminals and offenders in exceptional and rare cases—that is, only in such cases as are exclusively triable by the Court of Sessions.

"7. I have watched with great care and patience the progress of the said proceedings, and the course of subsequent events in connection with them, and I naturally expected that, immediately following the conviction of Mr. Hanmantrao, steps would be taken by Government, and the magisteral authorities of this district, to bring the said parties for trial before them on the said charges. But being utterly disappointed in this respect, simply as a friend of equity and even-handed justice, with all deference, I beg to lay this complaint before this Court; with a prayer that warrants should kindly be issued against the said six accused gentlemen for the said offences, and that they should be tried on the said charges, and punished accordingly.

GANESH NARAIN SATHE,  
 Shopkeeper near Bhutkar's Wada,  
 in Shukerwar Peith.

"Poona, October, 24, 1883."

The District Magistrate, without examining the complainant, or referring to the evidence recorded in Hanmantrao's case, passed the following order :—

"There being, in the judgment of the Court, no sufficient grounds for proceeding in this case, the complaint is dismissed under s. 203 of the Code of Criminal Procedure (Act X of 1882)."

A Divisional Bench of the High Court (consisting of BIRDWOOD and JARDINE, JJ.) in the exercise of their revisional jurisdiction, called for a report from the Magistrate explaining the grounds of the dismissal of the complaint.

In his report the Magistrate gave the following reasons for dismissing the complaint :—

"The complaint was presented on the day before evidence was expected to be had in the cases under inquiry by the Crawford [594] Commission, in which cases the persons complained against were presumably to be examined as witnesses, and it was presented by a person who had no ostensible motive for arrogating to himself the functions of a public prosecutor beyond a declaration, contained in the complaint, that he was a 'friend of equity and even-handed justice'.

"At about the same time that the complainant presented his complaint in person, I received in a registered letter a duplicate copy of the complaint marked 'Immediate'.

"The circumstances under which the complaint was filed raised a strong suspicion in my mind that it was not a *bona fide* complaint, and that the object of the complainant, or of the person or persons at whose instigation he came forward, was to intimidate witnesses on whom the prosecution presumably relied in the proceedings before the Crawford Commission. I thought that I should be exercising a wise discretion if I declined to take any further action on this complaint.

"The suspicion which I formed as to the object of the complaint has, I may add, been subsequently strengthened by the very evident desire of the complainant, or those acting with him, to obtain immediate publicity, and to keep the charge hanging over the witnesses as long as possible.

"On the morning of the 25th October, the complaint was published in one of the Poona local papers (*The Deccan Herald*), although no reporters had been present when the complaint was presented in my Court; and not only was the complaint then published, but appended to it was a protest against the order dismissing the complaint. This protest was not presented by the complainant either in person, or through an authorized pleader, but was sent by post, and delivered to me many hours after publication.

"On the following day (26th) I received, also by post, a further communication purporting to come from the complainant, asking me to refer to the next issue of the *Deccan Herald* and there peruse a copy of a letter alleged to have been addressed to Mr. Norton, of the Madras Bar, asking him to appear and argue the case before me, and further asking me to defer passing any [595] order on the further representation made by the complainant till counsel appeared on his behalf.

"No further application has since been made to me in the matter."

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On receipt of this report, the High Court (BIRDWOOD and JARDINE, JJ.), issued notices to the accused, calling upon them to show cause why the Magistrate's order dismissing the complaint should not be set aside.

Notice was also given to the Government Pleader, and to the complainant, of the hearing of the case.

The case was argued before a Full Bench consisting of SARGENT, C.J., BAYLEY, SCOTT, and NANABHAI, JJ., on 28th January 1889.

*Jardine* (instructed by Messrs. *Little, Smith, Frere and Nicholson*) appeared for accused to show cause.

Rav Saheb V. N. *Mandlik* also appeared to show cause on behalf of accused No. 3.

The complainant did not appear.

*Jardine*:—The complaint is wholly based on the depositions of the accused in Hanmantrao's case. My first point is that those depositions do not show any offence. I ask the Court to refer to those depositions.

[SARGENT, C. J.—Is it necessary for us to go into the matter? The question before us is whether Mr. Vidal's order is good?]

*Jardine*:—I must, in justice to my clients, go into the evidence on which the complaint is based.

[BAYLEY, J.—Mr. Vidal does not go into the evidence.]

[SARGENT, C. J.—He simply said that the object of the complaint was not a *bona fide* one.]

*Jardine*:—I submit there is on the deposition no evidence of an offence. Take *Sindekar's* case.]

[SARGENT, C. J.—We are sitting as a Court of revision. We cannot say whether Mr. Vidal saw a *prima facie* case or not, and we do not wish to give any opinion on the subject.]

[596] *Jardine*:—I submit that the accused's conduct does not constitute an offence. They did not give bribes of their own accord. Hanmantrao extorted bribes from them. They are, therefore, not guilty of any offence. Lord Macaulay and the other Commissioners who reported on the Penal Code say in their report that "when a person who is solicited pays a bribe he is not to be prosecuted." The Commissioners say that such a person should receive no punishment.

[SARGENT, C. J.—That is not in the Code.]

*Jardine*:—I admit it is not in the Code. I was citing this rather as an authority to which the Court would pay great respect.

[SARGENT, C. J.—How are we to say that there is no other evidence? Hanmantrao might say that the accused went to him of their own free will, and offered the bribes. How can we say that there is no *prima facie* case?]

*Jardine*:—There is no mention, in the information, of any other evidence. You must look to the information, beyond which you cannot go.

[SARGENT, C. J.—We must leave it to the Magistrate to decide.]

*Jardine*:—If your Lordships are of opinion that I cannot go into that point here, I will go to others. My second point is that, under s. 132 of the Evidence Act, the answer which a witness is compelled to give cannot subject him to a criminal prosecution. See *Queen Empress v. Ganu Sonba*(1).

[SARGENT, C. J.—This is a point to be taken before Mr. Vidal.]  
*Jardine* :—My last point is that the Magistrate has exercised a wise discretion in dismissing the complaint. He had taken down the depositions of the accused in Hanmantrao's case, and he had an intimate knowledge of the whole matter. The Magistrate was right in the inference he drew that the complaint was filed for the purpose of intimidation. The complainant was a private person of no position. His sole object was to intimidate witnesses and arrest them almost on their way to give evidence before the Crawford Commission. I submit that the order of [597] the Magistrate was a proper order, and that he should not be directed to proceed with the case.

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#### JUDGMENT.

The judgment of the Full Bench was delivered by

SARGENT, C.J.—In this case an order had been made by Birdwood and Jardine, J.J., in the exercise of the power of revision of this Court, for notices to be served on Balkrishna Govind Sindekar, Balvant Narayan Dabir, Mahadev Keshab Kumtekar, Ramchandra Gopal Javarkar and Narayan Shamray Satbhai to show cause why the Magistrate's order, dated the 24th October 1888, dismissing the complaint of one Ganesh Narayan Sathe should not be set aside. Notice was also ordered to be given to the Government Pleader and the complainant. At the hearing of the rule no one has appeared, except the accused, who have been represented by counsel. This order was made in consequence of a letter of the 6th November 1888 from the District Magistrate of Poona, in reply to the request by Mr. Justice Birdwood and Mr. Justice Jardine, that he would state how he had disposed of the complaint made by Ganesh Narayan Sathe. In that letter the Magistrate stated that he had summarily dismissed the complaint under s. 203 of the Criminal Procedure Code (Act X of 1882), "there being, in his judgment, no sufficient grounds for proceeding with the case." As his reasons for so acting, the District Magistrate further stated that "the circumstances under which the complaint was filed raised a strong suspicion in my mind that it was not a *bona fide* complaint, and that the object of the complainant, or of the person or persons at whose instigation he came forward, was to intimidate witnesses on whom the prosecution presumably relied in the proceedings before the Crawford Commission. I thought that I should be exercising a wise discretion if I declined to take any further action on this complaint."

We may remark, at the outset, that the Magistrate could not dismiss the complaint under s. 203 until he had examined the complainant, and this he appears not to have done. As to the reason assigned by him for dismissing the complaint, it is plain that he allowed himself to be influenced by considerations altogether apart from the facts which were adduced by the complainant [598] in support of the charge, that he proceeded exclusively on what he presumed, from the surrounding circumstances, to be the motive by which the complainant was actuated in moving in the matter. In doing so, we think, he failed to exercise his discretionary power of summary dismissal within the limits assigned to it by s. 203 of the Criminal Procedure Code (Act X of 1882). There is a close analogy between that power and the discretion which a Magistrate in England has as to refusing to issue a summons or warrant. In *Ex parte Woolf*, referred to in *The Queen v. Adamson* (1), a *mandamus* was granted where a Magistrate

(1) L.R. 1 Q.B.D. 204.

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refused to issue process on the ground that it appeared to him to be an attempt to enforce a civil right through a Criminal Court. In *The Queen v. Adamson* (1), where there was a charge of conspiracy to break the peace and do grievous bodily harm, founded upon a riot which took place at a public meeting, and the Magistrates refused to issue summons, the Court of Queen's Bench, consisting of Cockburn, C. J., Blackburn and Field, J.J., having come to the conclusion that the Magistrates had, as the Chief Justice expresses it, "acted upon a consideration of something extraneous and extra-judicial," and had not "exercised their discretion upon the facts, presented to them," sent back the case to the Magistrates with that expression of opinion. Mr. Justice Field says (p. 206): "What the Justices have to consider is, whether there was *prima facie* evidence of a criminal offence which, in their judgment, calls upon the alleged offender to answer", and such, we think, is the nature and extent of the discretion which the Magistrate has under s. 203 in determining whether he should dismiss the complaint or proceed. The expression 'sufficient ground' points exclusively to the facts which the complainant brings to the knowledge of the Magistrate, and to their establishing a *prima facie* trustworthy case against the accused. The motives by which complainants are actuated must necessarily be of the most varied description; any attempt to determine them would open out a very wide and speculative field of enquiry. The object of a Criminal Code of Procedure is to provide a machinery for the punishment of offenders against the substantive criminal law. Had it been [599] intended that the Magistrate should only proceed to enquire into an alleged offence when the complainant's motives were such as he could approve of, we should have expected very different language to have been used. It was, however, argued before us that it was open to the Magistrate to take into his consideration, apart from the question of the complainant's motive, the effect which further proceedings might have in the impending enquiry before the Crawford Commission; but that enquiry was a matter entirely outside the facts bearing on the alleged offence, and which the Magistrate could not, therefore, in our opinion, import into the question before him. It was, however, urged upon us that the only evidence before the Magistrate were the admissions made by the accused in Hanmantrao's trial, and that those admissions could not, having regard to s. 132 of the Evidence Act I of 1872, and the policy of the present law in India, be used as a ground for criminal proceedings against the accused. As the complainant was not examined by the Magistrate, it is impossible to say whether or no there was other evidence forthcoming in support of the prosecution; and it is to be remarked that in the complainant's second letter to the Magistrate of the 24th October 1888, he alludes not only to the statement by the accused, but to the rest of the evidence adduced at Hanmantrao's trial. It would, therefore, be necessary in any case to send back the record to the Magistrate. Moreover, the question, whether the alleged incriminating statements were made by the accused under circumstances which would preclude their being used as evidence against them in support of the present charge, only arose incidentally on the present rule, and was consequently not argued before us, the prosecution having no reason to suppose that the question would be raised. Under these circumstances it would not only be unfair to the prosecution, but highly inconvenient, having regard to existing decisions of this Court and

(1) L.R. 1 Q.B. D. 201; (205).

the Court of Madras, were we, sitting, as we do, as a Court of revision on the past action of the Magistrate, to express an opinion on the subject, which is undoubtedly one of some difficulty.

We must, therefore, return the complaint to the Magistrate, for him to deal with it according to law.

*Order reversed and case remanded.*

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[600] REVISIONAL CRIMINAL.

*Before Mr. Justice Scott and Mr. Justice Jardine.*

IN RE GANESH NARAYAN SATHE.\* [19th June, 1889.]

*Criminal Procedure Code (Act X of 1882), ss. 203, 248, 485—Dismissal of complaint—Withdrawal of complainant in a warrant case not a ground for dismissal of complaint—Who may complain—Complainant not a witness punishable for refusal to answer.*

As a general rule any person, having knowledge of the commission of an offence, may set the law in motion by a complaint, even though he is not personally interested or affected by the offence. The exceptions to this rule, of which ss. 195 and 198 of the Criminal Procedure Code are examples are exceptions created by statute. There is nothing in the Code showing an intention to confine prosecutions to the persons directly injured.

Where the offence charged is a "warrant" and not a "summons" case a Magistrate ought to proceed with the inquiry or trial in spite of the withdrawal of the complainant, if he finds the elements of an offence on the facts set forth in the complaint.

Section 248 of the Code of Criminal Procedure applies only to a "summons" case.

*Semhle*—A complainant is not a witness punishable for refusal to answer under s. 485 of the Code of Criminal Procedure, or under s. 179 of the Penal Code.

[F., 18 A. 465; 19 A. 64 = 16 A.W.N. 149; R., 14 B. 331 (349); 19 B. 51 (61); 20 B. 617 (622); 21 B. 517 (521) 21 C. 536 (538); 3 Bur.L.T. 124 = 11 Cr.L.J. 738 = 8 Ind. Cas. 952 = 5 L.B.R. 241; 8 Cr.L.J. 213 = 1 S.L.R. 83; 14 Cr.L.J. 409 = 20 Ind. Cas. 233; Rat. Unr. Cr. Cas. 740 (742); Rat. Unr. Cr. Cas. 844 (846); 15 Cr.L.J. 369 = 23 Ind. Cas. 737 = 7 S.L.R. 77.]

THIS was a complaint filed by Ganesh Narayan Sathe in the Court of the District Magistrate of Poona against Balkrishna Govind Sindekar and five other Mamlatdars, charging them with purchasing judicial offices through the instrumentality of one Hanmantrao Jaghirdar, who was alleged to have had influence with Mr. A. T. Crawford, Revenue Commissioner, C. D.

The complaint was dismissed by Mr. Vidal, the District Magistrate, under s. 203 of the Code of Criminal Procedure.

A Full Bench of the High Court set aside the order of dismissal, and remanded the case for investigation (1).

When the inquiry was resumed, the complainant at first avoided attending the Court. When he at last appeared before the Magistrate, he asked to be allowed to withdraw from the prosecution, alleging that he had no personal knowledge of the facts stated in his complaint. Thereupon Mr. East, who had succeeded Mr. Vidal as District Magistrate, examined

\* Criminal Review, No. 180 of 1889.

(1) *Vide Supra*, 13 B. 590.