

## Ganga Bux Singh And Anr. vs The State on 13 July, 1953

**Equivalent citations: AIR1954ALL22, AIR 1954 ALLAHABAD 22**

ORDER

Randhir Singh, J.

1. This is an application in revision against the order of the Sessions Judge setting aside the order of discharge passed by a Magistrate.

2. It appears that one Thakurain Kailash Kuar widow of Thakur Narendra Bikramjit Singh, taluqdar of Parsandi, died on 22-6-1949, leaving movable and immovable property. There was dispute in the mutation Court regarding immovable property and about a year and a half after the death of the lady a complaint was filed by Ram Nath Bakhsh Singh, brother of Thakurain Kailash Kuar's husband, against Ganga Bakhsh Singh and others, alleging that the accused had misappropriated property belonging to the widow. Process was issued against the accused and the case came up for hearing on 15-10-1951. An application was made by Ganga Bakhsh Singh accused asking the Court that he should be discharged as there was no case against him. Another application was made by the Deputy Commissioner, acting as President of a trust created by Narendra Bikramjit Singh, to the Court in which it was mentioned that no property belonging to Thakurain Kailash Kuar had been misappropriated by Ganga Bakhsh Singh or the other accused and that the complaint filed by Ram Nath Bakhsh Singh was false and baseless. The learned Magistrate then discharged Ganga Bakhsh Singh and the complainant went in revision to the Sessions Judge who set aside the order of discharge. Ganga Bakhsh Singh has now come up in revision to this Court.

3. A perusal of the order passed by the learned Sessions Judge shows that the Magistrate discharged the accused after perusing the applications made by him and by the Deputy Commissioner as also some registered documents produced by the accused Ganga Bakhsh Singh. No opportunity, it appears, had been given to the complainant to have his say about the matters mentioned in the applications or about the contents or the execution of the deed relied upon by the accused Ganga Bakhsh Singh.

It has been argued on behalf of the applicants in this court that the Magistrate was perfectly within his rights to pass an order of discharge in respect of any of the accused at any stage of the trial and that it was not incumbent upon him to record the entire evidence to be produced by the complainant before the order of discharge could be passed. He relied on Section 253 (2) Criminal P. C. There can be no doubt that a Magistrate is entitled to discharge an accused at any stage of an inquiry or trial if it appears to the Magistrate that the charge brought against the accused was groundless. The Magistrate, however, has to give reasons for the order of discharge. This provision, however, does not clothe the Magistrate with an arbitrary power of discharge. The magistrate is entitled to take advantage of the provisions of Section 253(2) if there are grounds and material on the record to

come to a definite conclusion that the charge was baseless.

In the present case the trust deed executed by Narendra Bikramjit Singh would not be of much avail inasmuch as Narendra Bikramjit Singh died in the year 1931 and was succeeded by his widow Thakurain Kailash Kuar who died in 1949. The widow was entitled to appropriate the profits of the estate during her life time and it is possible that she might have acquired some moveable property out of the profits or the income of the property and this property would go to the heirs of Kailash Kuar and would not be governed by the trust deed which was only in respect of the property belonging to Narendra Bikramjit Singh. It would have been difficult, therefore, for the Magistrate to come to the conclusion that the charge was baseless without making an inquiry as to whether the property in respect of which the charge of criminal misappropriation or breach of trust had been brought against the accused did or did not belong to Thakurain Kailash Kuar and was or was not misappropriated or taken away by the accused. The Magistrate, therefore, acted with undue haste in passing the order of discharge without making proper inquiry or without waiting for the full facts of the case being brought on the record.

In view of these circumstances it is difficult to say that the order passed by the Sessions Judge setting aside the order of discharge was not a proper order. The application made by the Deputy Commissioner as President of the Trust Committee was to say the least, ill-advised. The matter was before a Magistrate, and if anybody, howsoever high or disinterested he may be, brings to the notice of the Court that, the matter pending before the Court was false it would be a most indiscreet act and may even amount to a contempt of Court. The learned Magistrate should not therefore have taken into consideration any facts with regard to the merits of the complaint mentioned in the application. The facts mentioned by the accused in his application could have been taken into consideration if substantiated or if admitted by the complainant. No opportunity was, however, given to the complainant to admit or rebut the facts mentioned in the application. Taking into consideration all these circumstances I do not see any good reason for setting aside the order passed by the Sessions Judge. The application in revision is, therefore, dismissed.

It may, however, be noted that it would be open to the Magistrate to proceed under Section 253 (2) if the Magistrate finds, after all the material has come up before him, to lead to the conclusion that the charge against any of the accused was groundless.