

## **Badari Lal vs Bankeylal And Anr. on 6 October, 1955**

**Equivalent citations: AIR1956ALL304, 1956CRILJ569, AIR 1956 ALLAHABAD 304**

ORDER

Roy, J.

1. After hearing counsel for the parties I am unable to support the order dated 17-12-1953 passed by the learned Magistrate, dismissing the complaint under Section 203, Criminal P. C. The complaint had been made under Sections 420, 406 and 403 of the Penal Code. In the complaint the facts constituting the alleged offences have been stated. The complaint further specified the names of the witnesses on whom the complainant intended to rely in proof of those allegations.

The learned Magistrate recorded the statement of the complainant on oath on the reverse of the complaint and made only a pretence of an enquiry under Section 202, Criminal P. C., mentioning in his order dated 7-12-1953 that the complainant had no evidence with him to prove that a certain amount had not been paid to him. Obviously the Magistrate had in contemplation that an enquiry under Section 202 is envisaged in the case.

Where an enquiry is ordered or is contemplated under Section 202, Criminal P. C., and the complainant states in his complaint that he has witnesses to prove his case he should be given an opportunity of proving his case before the complaint is dismissed on the basis of such enquiry. If the enquiry ordered or contemplated, under Section 202 is insufficient, the order of dismissal of the complaint cannot be supported and a further enquiry must be directed.

2. Accordingly, the order dated 7-12-1953 passed by the learned Magistrate dismissing the complaint is quashed and it is directed that the record be sent back to the trial court for further enquiry and for proceeding in the manner in accordance with law.