

## **Mahadeo And Ors. vs Satya Narain on 30 July, 1952**

**Equivalent citations: AIR1953ALL36, AIR 1953 ALLAHABAD 36**

ORDER

Beg, J.

1. This is a revision application against the order of the learned temporary (Additional) Sessions Judge of Gonda setting aside the order of discharge passed by Sri Gopal Lal Shah, Special Magistrate, Gonda. The case arose out of a complaint made by one Satya Narain against five accused persons, namely Mahadeo, Lalta, Chhedi, Mata Prasad and Pearey for having committed offences under Sections 147, 323, 452 and 395, Penal Code. It would appear that Satya Narain complainant had a shop in village Paraspur. The landlord of the building was Mahadeo accused and the rent of the said shop was RS. 2-8-0 per mensem. The complainant was carrying on the profession of a goldsmith in that shop and kept some gold and silver also in the shop in connection with his work. According to the allegations of the complainant, on 17-10-1950, a person alleging himself to be a peon of the civil Court came to the shop and told him that he had come to eject him and to deliver possession of the shop to the accused. He was accompanied by five persons. These five persons were arrayed as accused in the complaint. It was alleged that these persons beat him with fists and kicks. They dislodged the safe from the masonry and placed it on the road. Twenty-two bhars of gold, 1100 bhars of silver, a chair, a dhoti, an account-book, some planks, some utensils and a chadar were left inside and locked therein by the complainant's party. A sub-inspector of police also happened to arrive on the scene shortly after. The accused were present on the spot at the time. The complainant had no knowledge of any civil Court decree of ejectment against him and according to his allegations even if any such decree was passed, it must have been obtained ex parte and by practice of fraud by the accused. On the above allegations he filed the aforesaid complaint under Sections 323, 147, 452 and 395, Penal Code.

2. On behalf of the complainant, six witnesses were examined. The learned Magistrate who recorded the evidence was not convinced that the aforesaid witnesses were trustworthy. He accordingly passed an order on 3-4-1951, discharging the accused under Section 253, Criminal P.C.

3. The complainant Satya Narain moved an application before the learned temporary (Additional) Sessions Judge of Gonda, who set aside the above-mentioned order of discharge and ordered further enquiry into the complaint. The ground on which the order was set aside by the lower Court was that the complainant had also mentioned Section 395, Penal Code as one of the offences which was committed by the accused, and an offence under Section 395, Penal Code was exclusively triable by the Sessions Court. The Magistrate, should therefore have proceeded under chap, XVIII, Criminal P.C. and not passed an order of discharge under Section 253, Criminal P.C.

4. I have heard the learned counsel for the parties at length and am of opinion that this revision must be allowed. The criticism of the learned temporary (Additional) Sessions Judge of Gonda that the Magistrate should not have treated the case as one under Section 253, Criminal P.C. is technically correct, but even if the Magistrate had proceeded under chap, XVIII, Criminal P.C., he would still have the power to discharge the accused under Section 209, Criminal P.C. It is true that the power to discharge the accused under Section 209, Criminal P.C. is not so wide as the power to discharge the accused under Section 253, Criminal P.C. Still it cannot be said that while acting under Section 209, Criminal P.C., the Court of enquiry is to become a mere automaton and cannot sift the evidence and believe or disbelieve witnesses. The learned counsel who prepared the case with commendable thoroughness has invited my attention to *Husaini v. Rex*, 1948 Oudh App. 61 in which it was held by a Judge of the late Chief Court of Avadh that a Magistrate conducting an enquiry under chap. XVIII does not act merely as a post office. I have, therefore, examined the order of the Magistrate, as if the order in question had been passed under Section 209, Criminal P.C., and am of opinion that the grounds given by him for discarding the evidence of the witnesses produced in the case are sufficient to justify an order of discharge even under that section.

5. (His Lordship discussed the facts and the evidence in the case and proceeded as follows:) The facts of the case are so patent and evident that they would even have warranted quashing of the proceedings at an initial stage of the case. To my mind, it would be an abuse of the process of the Court to allow these proceedings to go on further ..... apart from the harassment that it would cause to the accused. The entire proceedings, as I have already observed above, seem to be mala fide.

6. The learned counsel appearing for the opposite party places strong reliance on *Fattu v. Fattu*, 26 ALL. 564. The facts of that case were quite different. In that case the Magistrate after a minute scrutiny of evidence held that:

"Both sides of the case are in a suspicious condition, and there are doubts grave and unusual. Under these circumstances, the accused are, in my opinion, entitled to the benefit of the doubt."

In this particular case, as the above discussion would indicate there is no doubt regarding the innocence of the accused. Moreover, even in the said case *Aikman J.* while dealing with the function of a Magistrate acting under chap. XVIII observed as follows :

"As to the functions of a Magistrate who is holding an inquiry under Chap. XVIII, Criminal P.C. into cases triable by the Court of Session, or by the High Court, I am of opinion that he is empowered not only to consider whether the evidence for the prosecution, if true, furnishes sufficient grounds for committing the accused for trial, but that he can go further and weigh that evidence that is, that he can consider whether it is true. ...."

The Magistrate has weighed the evidence in this case and has rightly branded it as untrustworthy. I see no reason to take a different view. The order of discharge must, therefore, be upheld.

7. Accordingly I allow the revision, set aside the order of the learned temporary (Additional) Sessions Judge of Gonda and confirm the order of discharge passed by the trial Court.