Calcutta High Court
Jagat Chandra Mozumdar vs Queen-Empress on 12 May, 1899
Equivalent citations: (1899) ILR 26 Cal 786
Author: G A Wilkins
Bench: Ghose, Wilkins
JUDGMENT Ghose and Wilkins, JJ.

1. One Kunja Ganika filed a petition of complaint before the Magistrate, Mr. Balthazar, on the 14th September 1898. She was examined by the Magistrate, and deposed that the petitioner, who was then a Sub-Inspector of Police, flame to her house with a head constable and with other persons and enquired from her about a sari, in respect of which apparently a charge of theft had been edged by some other person. Her complaint was that the head constable himself introduced this sari into her house, and then pretended to have found there; and that she was then assaulted by the head constable and taken away the thana, whence she was ultimately allowed by the petitioner to depart without bail. Of the persons named in her vernacular petition of complaint accused, the present petitioner is not one; and the offences charged against hers were stated to be offences under Sections 352 and 354 of the Indian penal Code.

2. The Magistrate forwarded the complaint to his Deputy Commissioner for action to the prosecution thus instituted; in doing so he appears to we acted under some executive order in respect of complaints made against police officers. Sanction having been obtained, the Magistrate then summoned and examined the complainant's witnesses before issuing process against accused. Then, on the 28th September, he passed an order to summon the head constable under Section 193 of the Indian Penal Code, and the Sub-Inspector (petitioner) under Sections 193 and 109 of the Indian Penal Code. He then, on the 5th October and subsequent dates, heard evidence and drew up charges, viz., charges under Section 193 of the Indian Penal Code, and Section 29(Act V of 1861) against the head constable and a charge under Section 109 read with Section 193 of the Indian Penal Code against the petitioner and two others who were not police officers.

3. In the meantime, on the 5th October 1898, the Magistrate had asked his superior officer fora specific sanction to proceed against the sub-inspector, and he was on the 2nd November directed to proceed with the trial.

4. Then on the 30th November, the petitioner moved the Deputy Commissioner to stay all proceedings as against himself, and on the 10th February 1899 the Deputy Commissioner declined to interfere. The petitioner then moved the High Court and obtained a rule in the terms already set forth.

5. We have heard Mr. Jackson for the petitioner and have considered the cause shown by the Deputy Commissioner in his letter of explanation.

6. We think that the petitioner is not entitled to have this case transferred either on the ground of bias or by reason of Section 191 of the Criminal Procedure Code. As to bias of any kind disqualifying the Magistrate from trying out the case, or rendering it inexpedient that he should try it out, we can

find no indications upon the record, and indeed this part of the case was not pressed upon us by the learned Counsel for the petitioner. As regards Section 191 of the Criminal Procedure Code it is contended by Mr. Jackson that as the complaint of Kunja Ganika disclosed no offence under Section 193 of the Indian Penal Code the Magistrate must have taken cognizance of that offence under Clause (c) of Section 190 of the Criminal Procedure Code. But this is hardly so. The Magistrate in effect received a complaint of facts, which in his opinion constituted an offence under Section 193 of the Indian Penal Code, and consequently took cognizance of that offence under Clause (a) of Section 190 of the Criminal Procedure Code. The fact that the complainant did not specifically, and in terms, accuse any one of an offence under Section 193 of the Indian Penal Code does not affect the real position of affairs; if the facts, as stated by her in her deposition of complaint, constituted an offence which really would fall under Section 193 of the Indian Penal Code, then her complaint; was one under Clause (a) of Section 190 of the Criminal Procedure Code, and consequently the Magistrate was not debarred by Section 191 of the Code of Criminal Procedure from trying the case.

7. Then it was contended on the petitioner's behalf that the Magistrate could not legally take cognizance of the offence under Section 193 of the India Penal Code in the absence of any sanction under Clause (b) of Section 19 Criminal Procedure Code, inasmuch as this alleged fabrication of false evidence was "in relation to" some proceeding in some Court, and the case of Chand Mohon Banerjee v. Balfour (1899) ante, p. 359, was referred to in support this contention. But that case was altogether upon a different footing, for the petitioner therein was accused of having instigated one Mrs. Balfour to give fault evidence in a divorce case, which was actually pending in the High Court at the time. In the case now before us, there was no proceeding pending in any Court in relation to which the alleged false evidence was said to have been fabricate There was then simply an investigation, which was being held by the Police into the matter of the information in connection with the theft of the (sic) We are therefore of opinion that no sanction under Section 195 of the Criminal Procedure Code was necessary in this case. That none was legally require under any local executive order, in order to give the Magistrate jurisdiction, is conceded.

8. We finally proceed to consider the last question stated in the rule, viz., as to whether there is any case at all made out for the prosecution of the petitioner; but before doing so, we desire to say that, in our opinion, it is only very exceptional instances that this Court should as a Court of Revision interfere with the action of a subordinate Court in respect of any pending case, and especially when such a case has reached the stage where a charge has been drawn and only the defence of the accused remains to be heard. We do not desire to lay down, nor can we lay down, any hard and fast rule upon the subject, for the interference of this Court should be regulated by the particular circumstances of each case. But speaking generally it seems to us to be inadvisable to interfere in a pending case, unless there is some manifest and patent injustice apparent upon the face of the proceedings and calling for prompt redress. As we understand this portion of the rule, it contemplates the existence of such an injustice in the present case; for if neither the complaint, nor the evidence for the prosecution, makes out any case whatever against this petitioner, it is manifest that he should not have been charged and so called upon to enter upon his defence, and it follows that he should not be left, for a moment longer than is necessary, in the position of a person accused of an offence and forced to defend himself against a charge which there is no legal evidence to establish. Now, we have considered the whole of the evidence for the prosecution in the case before

us, and we fail to see that it discloses any act of the accused which can be interpreted so as to bring him within the four corners of the charge. There is nothing whatever to show that he himself did anything, or connived at any other person doing anything, towards fabricating any false evidence against the complainant either with or without the intention that such evidence should be used in any stage of a judicial proceeding. Whatever the head constable or the other accused may have done, there is nothing to show that the petitioner acted in any way except in the bond fide discharge of his duty, or that he was cognizant of any one fabricating any false evidence the purpose in question. This being so, it is clearly most unfair to him at he should now be called upon to rebut a charge which, upon the evidence, baseless in so far as it affects him. And to remedy this injustice, it is right at we should interfere.

9. We accordingly quash the proceedings, so far as the petitioner is concerned, and direct that he be at once discharged.