

A D. N. BHATTACHARJEE & ORS.

v.

STATE OF WEST BENGAL & ANR.

March 22, 1972

B [A. N. GROVER AND M. H. BEG, JJ.]

Code of Criminal Procedure (Act 5 of 1898), s. 203—Power of Magistrate to dismiss complaint.

C An order of dismissal of complaint under s. 203 Cr. P.C., has to be made on judicially sound grounds. It can only be made where the reasons given disclose that the proceedings cannot terminate successfully in a conviction. A Magistrate is not debarred, at this stage, from going into the merits of the evidence produced by the complainant, but the object of such consideration could only be to determine whether there are sufficient grounds for proceeding further. The mere existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. On the other hand, such grounds indicate the need for proceeding further in order to discover the truth after a full and proper investigation. If, however, a bare perusal of a complaint or the evidence led in support of it show that the essential ingredients of the offences alleged are absent or that the dispute is only of a civil nature or that there are such patent absurdities in the evidence produced that it would be a waste of time to proceed further, the complaint could be properly dismissed under the section. [976 E-H]

E Where, therefore, the Magistrate dismisses a complaint on a misreading of the oral evidence and the evidence, in fact, does not reveal any absurdity so as to merit a forthright dismissal of the complaint under the section, such an order is fit to be set aside by the High Court.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 156 of 1969.

F Appeal by special leave from the judgment and order dated April 15, 1969 of the Calcutta High Court in Criminal Revision No. 1114 of 1963.

C. K. Daphtary and D. N. Mukherjee, for the appellants.

G *P. K. Chatterjee and G. S. Chatterjee, for respondent No. 1.*

P. K. Mukherjee, for respondent No. 2.

The Judgment of the Court was delivered by

H **Beg, J.** On 11-7-1963 Sunilakshya Choudhry a Director of the Metropolitan Industrial Corporation Ltd., Calcutta, having been authorised by its Board of Directors, filed a complaint against the appellant Debendra Nath Bhattacharjee (or Bhattacharya), a former Director, and Banamali Pathak, Cashier of the Bengal
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Luxmi Cotton Mills Ltd., and Hiran Roy, Chief Accountant of the Bengal Luxmi Cotton Mills Ltd., alleging offence punishable under Sections 408/409/467/471/477A/109 Indian Penal Code.

The complainant alleged that, when the Life Insurance business was nationalised in 1956 the Metropolitan Insurance Co. Ltd. (hereinafter referred to as 'the Company') received a sum of about Rs. 10,25,523/- as compensation, and the Company was transformed into Metropolitan Industrial Corporation (hereinafter referred to as 'the Corporation'). The business of the Corporation was said to be confined to making of loans, and dealings in stocks and shares. The complainant was Director of the Company in 1957 and the accused appellant D. N. Bhattacharjee was alleged to be its Managing Director with absolute control over the funds of the Company and the only person authorised to operate the banking account of the Company with the Metropolitan Bank Ltd. Roundabout October, 1958, although, the appellant Bhattacharjee was said to have ceased to be the Managing Director, yet, he is alleged to have continued to exercise the powers he had possessed as Managing Director. After the Company became the Corporation certain activities of the appellant D. N. Bhattacharjee are alleged to have come to light and compelled his resignation on 28-2-1963 so that he handed over some of the Books and records of the Corporation to the complainant. The complainant, after having examined the records handed over by D. N. Bhattacharjee, claimed to have found monthly pay sheets containing names of certain employees who were not employees of the Corporation at all and who were suspected to be fictitious as they could not be traced. The complainant alleged that, on further enquiry, he found that the Corporation had not employed anybody at all but had taken occasional help from certain employees of sister concerns which had their offices in the same building. In other words, the complainant claimed to have discovered that the pay-sheets of the Corporation were totally false and fabricated. He also complained that fictitious signatures of supposedly different persons appeared to him to have been made by a single person so as to appear as signatures of different actually existing individuals. The complainant alleged that his suspicions were confirmed by sending these alleged signatures to a Handwriting Expert for opinion. According to the complainant, all this was done at the instance of or with the complicity of D. N. Bhattacharjee and with the aid of the two other co-accused. It was asserted that D. N. Bhattacharjee had full knowledge of what was taking place and had dishonestly misappropriated and converted to his own use large sums of money belonging to the Corporation. He and the two co-accused, who are said to have actually made the entries, were alleged to have been engaged in a conspiracy. The complainant gave a list of five witnesses, including that of a Handwriting Expert, and he relied

- A upon a number of account books, documents, and records of the Company and the Corporation.

After an enquiry into the allegations contained in the complaint a Presidency Magistrate found *p. ima facie* evidence of a conspiracy to commit breach of trust by forging receipts and use of forged receipts and falsification of accounts. On 2-8-1963, the Presidency Magistrate, ordered the case to be put up before the Chief Presidency Magistrate for further orders.

- B
- C On 10-8-1963, the Chief Presidency Magistrate, after giving particulars of the prosecution case and the evidence produced to support it, went on to observe : "In assessing the evidence adduced for the purpose of taking out a process, certain broad facts and circumstances and probabilities cannot, in my opinion, be overlooked". The Chief Presidency Magistrate then mentioned the reasons which, in his opinion, justified a dismissal of the complaint without issue of process. He pointed out : firstly, that the Company, which was admitted to be a going concern, must have had some of its own employees who must have been taken over by the Corporation in 1960; secondly, that D. N. Bhattacharjee, at the time of his resignation on 28-2-1963 had handed over the records and account books of the Company to the complainant which fact indicated that he "probably" did not know that any of these were forged for fabricated; thirdly, that it was "improbable" that the Corporation could carry on its business without its own employees; fourthly, that evidence had not been led to show what enquiries were made to indicate that the names on the pay sheet were fictitious; fifthly, that the complainant had himself admitted that one or two persons shown in the pay sheet might have been employed by the Corporation and that this "demolished" the whole prosecution case of fictitious entries; and, sixthly, that the opinion of the Handwriting Expert "does not appear to be emphatic" and was also not supported by "sufficient reasons". On these grounds, the Chief Presidency Magistrate, after holding that there were "really, no sufficient grounds to proceed further" dismissed the complaint under Sec. 203 Criminal Procedure Code.
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- G The complainant then invoked the Revisional jurisdiction of the Calcutta High Court. That Court, after an examination of the complaint, the evidence produced for the purpose of issuing process to the accused persons, and the order of the Chief Presidency Magistrate, came to the conclusion that the order of dismissal of the complaint under Sec. 203 Criminal Procedure Code was improper.
- H The High Court held that the order contained a pre-mature verdict on the merits of the case. Furthermore, the High Court pointed out that the Chief Presidency Magistrate had misread the oral evidence in finding that the complainant said that one or two persons

mentioned in the pay sheets might have been employed by the Company sometimes. A correct reading of the evidence of the complainant, which we have also examined, was that one or two persons may have been employed by the Company from time to time but none of the persons whose names appeared in the pay sheets were any of those persons. Even if the complainant had said that some of the entries in the account books appeared to be deliberately false, the complaint would not have merited a forthright dismissal without further enquiry. The High Court, in our opinion, rightly considered the order pronouncing a judgment on the merits of the case on bare probabilities and surmises to be premature. The High Court, very rightly, did not express any opinion on merits of the prosecution case beyond saying that the case called for further enquiry. It, therefore, set aside the order of dismissal under Section 203 of the Criminal Procedure Code and sent back the case for further enquiry in accordance with law.

The accused have come up to this Court by Special leave against the above-mentioned order of the High Court for further enquiry into the case. It is urged that the High Court should not have, in exercise of its revisional jurisdiction, set aside the Chief Presidency Magistrate's order. We are unable to accept this contention because we think that the Presidency Magistrate had not correctly understood the scope and purpose of the power to dismiss a complaint under Section 203 Criminal Procedure Code.

It has to be remembered that an order of dismissal of a complaint under Section 203 Criminal Procedure Code has to be made on judicially sound grounds. It can only be made where the reasons given disclose that the proceedings cannot terminate successfully in a conviction. It is true that the Magistrate is not debarred, at this stage, from going into the merits of the evidence produced by the complainant. But, the object of such consideration of the merits of the case, at this stage, could only be to determine whether there are sufficient grounds for proceeding further or not. The mere existence of some grounds which would be material in deciding whether the accused should be convicted or acquitted does not generally indicate that the case must necessarily fail. On the other hand, such grounds may indicate the need for proceeding further in order to discover the truth after a full and proper investigation. If, however, a bare perusal of a complaint or the evidence led in support of it show that essential ingredients of the offences alleged are absent or that the dispute is only of a civil nature or that there are such patent absurdities in evidence produced that it would be a waste of time to proceed further, the complaint could be properly dismissed under Section 203 Criminal Procedure Code.

- A** In the case before us, the learned Magistrate was in error in assuming that merely because the names of one or two former employees of the Company may be mentioned in the pay-sheets the whole prosecution case was actually demolished. Moreover, as the High Court had rightly pointed out, the complainant's actual evidence had fully supported and not contradicted any part of the complaint.
- B** No such absurdity was revealed by the complainant's evidence as to merit a forthright dismissal of the complaint under Section 203 Criminal Procedure Code. What the Magistrate had to determine at the stage of issue of process was not the correctness or the probability or improbability of individual items of evidence on disputable grounds, but the existence or otherwise of a *prima facie* case on the assumption that what was stated could be true.
- C** unless the prosecution allegations were so fantastic that they could not reasonably be held to be true.

- As we, in agreement with the High Court, think that the order of the Chief Presidency Magistrate in dismissing the complaint was pre-mature and was also based on obvious misconceptions, we
- D** dismiss this appeal.

V.P.S.

Appeal dismissed.