

CRIMINAL MISCELLANEOUS

Before Bhandari, C. J.

PIARA SINGH,—Petitioner

versus

THE STATE AND ANOTHER,—Respondents

Criminal Misc. No. 496 of 1957.

Code of Criminal Procedure (Act V of 1898)—Section 176—Investigation under—Nature of—Power of magistrate holding an enquiry under—Whether executive or judicial.

1957

Nov. 29th

Held, that an investigation under section 176 of the Code of Criminal Procedure occupies no higher position than a coroner's inquest although by virtue of a definition appearing in the body of the Code it has been dignified to the status of a legal proceeding. A Magistrate holding an enquiry under this section acts purely in an executive capacity, for he is required only to ascertain the cause of death and not to establish the rights of parties. His authority thus lacks the first element of judicial power. Proceedings at an inquest are intended to be merely a preliminary investigation and not a trial involving the merits. The result of the enquiry is not binding upon any one and cannot be regarded as a judgment. It is wholly immaterial as far as Courts are concerned whether this enquiry is held by one executive officer or another, for even if a false accusation is brought against the petitioner and his friends, they will have ample opportunity of refuting the charges if and when a criminal case is instituted in a Court of law.

Petition under sections 526, 561-A, Criminal Procedure Code, and the Contempt of Courts Act, praying for the transfer of the judicial enquiry into the cause of death of Hazara Singh, Piara Singh, sons of Kirpa Singh, and Gian Singh, bad characters, from the Court of Shri C. D. Khanna, Magistrate, 1st Class, Karnal, and for committing S. Partap Singh Kairon, Chief Minister of the Punjab State, for contempt of Court.

BHAGIRATH DAS and K. S. THAPAR, for Petitioner.

S. M. SIKRI, Advocate-General, for Respondent.

ORDER

Bhandari, C.J.

BHANDARI, C. J.—The facts of this case have been set out at length in our order of the 11th November, 1957, and do not need to be recapitulated.

In his application dated the 7th September, 1957, the petitioner alleged that the District Magistrate of Karnal was not justified in transferring the enquiry under section 176 of the Code of Criminal Procedure from the Court of Mr. Onkar Nath, a senior confirmed lawyer Magistrate, to the Court of Mr C. D. Khanna, a Junior Executive Magistrate, particularly when all the witnesses had been examined by Mr. Onkar Nath and the parties were not given a notice by the District Magistrate of his intention to transfer the case. The petitioner accordingly complained that in the circumstances of the case the exercise of powers under section 528 of the Code of Criminal Procedure amounted to an abuse of the process of the Court. This complaint, however, did not come up for consideration before us when the petition was heard, as we indicated to the parties during the course of arguments that a Magistrate holding an enquiry under section 176 of the Code of Criminal Procedure cannot be said to be performing the functions of a Court of law.

On the 10th October, 1957, the petitioner reiterated his request that this enquiry should be removed from Mr. C. D. Khanna who was attached to the Karnal District and transferred to a Magistrate who was attached to another district.

Mr Sikri, who appears for the respondents, contends that it is wholly immaterial to Government whether the enquiry is conducted by Mr. Khanna or by another Magistrate and that as

far as they are concerned they would like this enquiry to be entrusted to a Judge of this Court or to any Sessions Judge serving under this Court. He contends, however, that on the facts stated in the petition no case has been made out for the transfer of the enquiry from Mr. Khanna to a Magistrate posted outside the Karnal District.

Piara Singh
v.
The State and
another

Bhandari, C.J.

Mr. Bhagirath Das, who appears for the petitioner, contends that his client is at great disadvantage in asserting or obtaining his legal rights in the Karnal District, for the local influence of his adversaries is powerful and the local prejudice against the petitioner great. He accordingly prays that as the atmosphere of the Karnal District is poisoned with false propaganda, this enquiry ought in fairness to the petitioner be entrusted to a Magistrate posted elsewhere in the Punjab. In support of his contention that undue influence is being brought to bear upon Magistrates he invites our attention to a communication addressed by Shri Onkar Nath, to the District Magistrate of Karnal in which he reported as follows :—

“I have already brought it to your notice how some people here are trying to influence the course of this enquiry by disseminating the so-called Secretariat information. I requested you to relieve me of this enquiry but you were pleased to remark that I shall ignore the false propaganda that was being carried on by certain persons here and complete the enquiry as soon as possible.

In view of the development now taking place I shall request you to kindly depute some other officer for holding this inquest.”

Piera Singh
v.
The State and
राज्य
Bhandari, C.J.

The District Magistrate thereupon passed the following order:—

“In view of the above note of Shri Onkar Nath, Magistrate, first class, the enquiry is transferred to Shri C. D. Khanna, Magistrate, first class.”

I regret I am unable to hold that a case has been made out for the transfer of this proceeding. In the first place an investigation under section 176 of the Code of Criminal Procedure occupies no higher position than a coroner's inquest although by virtue of a definition appearing in the body of the Code, it has been dignified to the status of a legal proceeding. A Magistrate holding an enquiry under this section acts purely in an executive capacity, for he is required only to ascertain the cause of death and not to establish the rights of parties. His authority thus lacks the first element of judicial power. Proceedings at an inquest are intended to be merely a preliminary investigation and not a trial involving the merits. The result of the enquiry is not binding upon any one and cannot be regarded as a judgment. It is wholly immaterial as far as Courts are concerned whether this enquiry is held by one executive officer or another, for even if a false accusation is brought against the petitioner and his friends they will have ample opportunity of refuting the charges if and when a criminal case is instituted in a Court of law.

Secondly, it is manifest that the interest, if any, is being attributed to a person occupying a high position in the public life of the State. His influence is not confined to the limits of the Karnal District but extends to the whole State.

Thirdly, it seems to me that Mr Khanna has not been shown to be interested in one party or the other and no allegation of bias or prejudice has been made against him personally. He has not been shown to be under the influence of any one and has not displayed a spirit of partisanship in the present case.

Piara Singh
v.
The State and
another
Bhandari, C.J.

Fourthly, all the witnesses who are to be examined under section 176 are residents of the Karnal District and in the absence of compelling reasons to the contrary, the enquiry ought *prima facie* to be held in the Karnal District itself.

I am accordingly of the opinion that no case has been made out for the transfer of this executive proceeding from one Magistrate to another. This part of the petition must, in my opinion, be dismissed. I would order accordingly.

KHOSLA, J.—I agree.
B.R.T.

Khosla, J.

