CRIMINAL REFERENCE.

Before Mookerjee and Sheepshanks JJ.

1916

May 31.

TAYEBULLA

v.

EMPEROR.*

Sanction for Prosecution—Information to the police reported false—No subsequent application to the Magistrate for judicial investigation—Order of Magistrate calling on informant to prove case, and examination of witnesses—Grant of sanction—Necessity of sanction when false charge made to the police but not followed by complaint—"Complaint"—Power of Magistrate to direct prosecution himself in such case—"Judicial proceeding"—Criminal Procedure (Code, Act V of 1898) ss. 4 (h), 195 (1) (b), 476.

No sanction is necessary under s. 195 (*1*), (*b*) of the Criminal Procedure Code to prosecute an informant under s. 211 of the Penal Code when a false charge has been made by him only to the police.

Karim Bakhsh v. *King-Emperor* (1), *Bhimaraja Venkateswarulu* v. *Moova Bapulu* (2), *Emperor* v. *Sheikh Ahmed* (3) followed.

But sanction is requisite under the section when he has subsequently preferred a complaint to the Magistrate praying for judicial investigation.

Queen-Empress v. *Sham Lall* (4), *Jogendra Nath Mookerjee* v. *Emperor*, (5) *Queen-Empress* v. *Sheik Beari* (6) followed.

When a person who has laid an information before the police, reported to be false, has not subsequently applied to the Magistrate for an investigation or has not impugned the correctness of the police report and prayed for a trial, he has not made a "complaint" within the meaning of s. 4 (*h*) of the Code.

An order for prosecution cannot be made under s. 476 of the Criminal

* Criminal Reference No 78 of 1916, by J. H. A. Street, Additional Sessions Judge of Sylhet, dated May 17, 1916.

(1) (1904) 2 Cr. L. J. 66.
(2) (1912) 13 Cr. L. J. 480.
(3) (1911) 13 Cr. L. J. 578.
(4) (1887) I. L. R. 14 Calc. 707.
(5) (1905) I. L. R. 33 Calc. 1.
(6) (1887) I. L. R. 10 Mad. 232.

Procedure Code when the alleged offence under s. 211 of the Penal Code has not been committed in Court, but in relation to a police investigation only.

Dharmadas Kawar v. *King-Emperor* (1), *Jadunandan Singh* v. *King-Emperor* (2) followed.

The procedure of calling on the informant, who is reported by the police to have made a false charge before them, to prove his case and the examination of witnesses is not contemplated by the Code, and the proceeding is not a judicial one within s. 476 of the Code.

Mouli Darzi v. *Naurangi Lall* (3) followed.

ON the 17th January 1916, one Tayebulla laid an information at the Moulvi Bazar thana charging Karam Sheikh and two others with theft of paddy. The Inspector of Police, after investigation, reported the case to be false, on the 31st, but stated that there was no evidence to prosecute the informant under s. 211 of the Penal Code. The latter did not thereafter file a complaint before the Subdivisional Officer impugning the correctness of the police report and praying for a judicial inquiry or trial, but the Magistrate, on receipt of the police report, passed an order, on the 12th February: "Complainant to prove case." The Magistrate then examined witnesses, as to the truth of the original charge, on the 18th March, and directed the police "to adduce evidence on 5th April to prove that the case was maliciously false." On the latter date, after hearing further witnesses, the Magistrate recorded an order dismissing the "complaint" under s. 203 of the Criminal Procedure Code, and granting sanction for the prosecution of the complainant.

The Additional Sessions Judge of Sylhet, thereupon, referred the case to the High Court, under s. 438 of the Criminal Procedure Code, by his letter, dated the 17th May, recommending the quashing of the sanction order.

No one appeared in the Reference.

(1) (1908) 7 C. L. J. 373. (2) (1909) 10 C. L. J. 564.
(3) (1900) 4 C. W. N. 351.

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MOOKERJEE AND SHEEPSHANKS JJ. This is a reference under section 438 of the Criminal Procedure Code by the Additional Sessions Judge of Sylhet. On the 17th January 1916, the petitioner laid a first information, under section 154 of the Criminal Procedure Code, at the Moulvi Bazar police-station against Karam Sheik and others, and alleged that they had stolen his paddy and had thereby committed a cognizable offence under section 379 of the Indian Penal Code. The police investigated into the matter, and, on the 31st January, submitted a final report under section 173, to the effect that the case appeared to be false and that there was no evidence for false prosecution. The Subdivisional Officer, on receipt of this report, passed an order on the 12th February in the following terms: "Complainant to prove his case." It will be observed that the complainant had not applied to the Magistrate to investigate into the matter. On the 18th March, the Magistrate examined four witnesses, and ordered the police "to adduce evidence on the 5th April to prove that the case was malicious." On the day fixed, six more witnesses were examined. The Magistrate then recorded the following order: "It is evident from their depositions that there is a party feeling in the village, but the witnesses examined by the complainant had suppressed it. The complainant has totally failed to prove his case. I declare the case to be maliciously false and dismiss it under section 203. I sanction the prosecution of the complainant Tayebulla under section 211 of the Indian Penal Code." The Sessions Judge has, on the application of Tayebulla, recommended that the order be set aside. It is plain that the order for sanction cannot be supported.

No sanction was required in this case under section 195 (*1*) (*b*). A sanction is requisite in respect

of an offence under section 211 of the Indian Penal Code, only when such offence has been committed in or in relation to any proceeding in any Court; no sanction is necessary when a false charge has been made to the police and has not been followed by a judicial investigation thereof by a Court: *Karim Bakhsh* v. *King-Emperor* (1), *Bhimaraja Venkateswarulu* v. *Moova Bapulu* (2), *Emperor* v. *Sheikh Ahmed* (3). The position is different where, upon the police report as to the falsity of the complaint, the complainant insists upon a judicial investigation; if he does so, he is deemed to have preferred a complaint to the Magistrate. If the Magistrate finds his case to be false, a sanction would be requisite under section 195 (*1*) (*b*), as the offence may be said to have been committed in a proceeding in a Court: *Queen-Empress* v. *Sham Lall* (4), *Jogendra Nath Mookerjee* v. *Emperor* (5), *Queen-Empress* v. *Sheik Beari* (6). In the case before us, the petitioner never applied to the Magistrate for investigation; he did not impugn the correctness of the police report nor did he pray that the person accused by him might be brought to trial. He was never examined on oath by the Magistrate; he cannot by any stretch of language be deemed to have made a "complaint" under section 4 (*h*), and it is difficult to understand what the Magistrate meant when he dismissed the case under section 203. It is thus clear that the order for sanction to prosecute is bad, if it be deemed to have been granted under section 195. The order is equally bad, if we hold that the Magistrate has inaccurately expressed himself, and that what he really intended was to make an order under section 476 (*1*). In the first place, as pointed out in

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Dharmadas Kawar v. *King-Emperor* (1) and *Jadunandan Singh* v. *King-Emperor* (2), section 476 must be read with section 195, and is consequently restricted by the limitations contained in clause (*b*) of that section. An order for prosecution under section 476 cannot thus be made where the alleged offence under section 211 has been committed not in Court but in relation to a police investigation. In the second place, a Court is competent to take action under section 476, only when the alleged offence has been committed before it or brought under its notice in the course of a judicial proceeding Here the alleged offence was not committed in Court: nor was it brought to the notice of the Magistrate in the course of a judicial proceeding. The report by the police was not under section 157 so as to entitle the Magistrate to proceed under section 159. The procedure he adopted is not contemplated by the Code: *Mouli Durzi* v. *Naurangi Lall* (3). There was thus no judicial proceeding before him, and he could not consequently have taken action under section 476. It follows accordingly that his order cannot be sustained either under section 195 or under section 476. We must, therefore, accept the recommendation of the Sessions Judge and set aside the order of the 5th April 1916.

E. H. M.

(1) (1908) 7 C. L. J. 373. (2) (1909) 10 C. L. J. 564.
(3) 1900) 4 C. W. N. 351.