

CRIMINAL REVISION.*Before Chapman and Walmsley JJ.*

GANGADHAR PRADHAN

v.

EMPEROR.*

1915

Aug. 17.

False Information—Information to the police reported false—Subsequent petition to the Magistrate impugning the report and praying for trial—Complaint—Proper procedure—Reference of complaint to another Magistrate for inquiry and report, legality of—Power of latter to hold inquiry and direct prosecution of informant for offences under ss. 182 and 211 of the Penal Code—Jurisdiction of referring Magistrate to try such charges on the police report without previous disposal of the complaint—Discretion—Prejudice—Criminal Procedure Code (Act V of 1898) ss. 192, 200 to 203, 476, 537.

A petition impugning the police report, and praying that the accused be placed on trial is a "complaint" under the Criminal Procedure Code.

When such a petition is presented to a Subdivisional Magistrate he should, therefore, either examine the complainant himself, record reasons for distrusting its truth, hold an inquiry personally, and then pass a formal order of dismissal, or he should make it over to another Magistrate for disposal. The latter may then, after inquiry, make a proper order dismissing the complaint and pass an order under s. 476 of the Code.

The Code does not permit a Magistrate to refer a complaint to another Magistrate for inquiry and report, and the latter has no jurisdiction in such a case to pass an order under s. 476.

Where in such a case the police have reported the information as false, and have asked for a prosecution, the Magistrate has jurisdiction to try the charge on the police report.

Queen-Empress v. Sham Lall (1) referred to.

There is no statutory provision requiring such petition to be finally disposed of as a complaint before a prosecution under s. 211 of the Penal

* Criminal Revision No. 877 of 1915 against the order of H. Allanson, Sessions Judge of Cuttack, dated May 25, 1915.

(1) (1887) I. L. R. 14 Calc. 707.

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Code commences. It is a matter of discretion, and the High Court will not, having regard to s. 537 of the Code, interfere with a conviction if the accused has not been prejudiced.

The facts of the case are as follows. On the 24th December 1914, the petitioner, Gangadhar Pradhan, laid an information at the Kendrapara thana, alleging that he was informed that a burglary had been committed in his house, the night previous, during his absence from home, and that he suspected certain persons named. On the morning of the 25th the Sub-Inspector proceeded to the petitioner's village and searched the houses of the suspects. He then held an investigation and submitted a report, dated the 30th, to the Subdivisional Officer stating that the case was maliciously false, and recommending the prosecution of the petitioner under ss. 182 and 211 of the Penal Code. Thereupon, the Subdivisional Magistrate called for a further report from the police on the question of the petitioner's motive, and the same was sent in on the 21st January 1915 confirming the previous report. On the latter date the petitioner filed a petition before the Magistrate impugning the correctness of the police reports and praying for judicial inquiry and subsequent trial of the suspects. The Magistrate thereupon passed the following order without examining the petitioner:—

“To Babu J. N. Mitra, Sub-Deputy Magistrate, for inquiry and report. After considering the police reports and the other evidence adduced in Court, if he agrees in the view taken by the police, he may submit a proceeding under s. 476 to this Court for the prosecution of the complainant under s. 211, I. P. C.”

The Sub-Deputy Magistrate examined the petitioner and his witnesses in Court, and also held a local investigation, and thereafter drew up a proceeding under s. 476 of the Criminal Procedure Code against the petitioner and submitted it to the Sub-

divisional Officer with a report that the case was false. On receipt of the record, the latter, without formally dismissing the petition of the 21st January, issued a warrant against the petitioner under ss. 182 and 211 of the Penal Code and proceeded to try him thereunder. He convicted the petitioner, on the 10th May 1915, and sentenced him to six months' rigorous imprisonment. An appeal against the order of conviction was dismissed by the Sessions Judge of Cuttack, on the 25th May, and the petitioner thereupon moved the High Court and obtained the present rule.

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Babu Biswanath Bose and Babu Dharendra Nath Dutt, for the petitioner.

Mr. S. Ahmed, for the Crown.

Cur. adv. vult.

CHAPMAN AND WALMSLEY JJ. The petitioner laid an information at a police station to the effect that his house had been broken into at night. The police investigated and reported that the charge was false. They requested that the petitioner be prosecuted under section 182 of the Indian Penal Code. The report was received by the Subdivisional Magistrate. Upon the same date the Subdivisional Magistrate received a petition from the petitioner impugning the police report, and asking that the persons whom he accused should be put on their trial. The Subdivisional Magistrate referred this petition to a Sub-Deputy Magistrate for inquiry and report, intimating that, if the Sub-Deputy Magistrate agreed with the view taken of the case by the police, he might submit a proceeding under section 476 of the Code of Criminal Procedure to the Subdivisional Magistrate for prosecution of the petitioner under section 211 of the Indian Penal Code. The Sub-Deputy Magistrate examined the petitioner

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and his witnesses and held a local investigation. He also examined the police officer. He reported that the charge was false, and submitted a proceeding under section 476, for the prosecution of the petitioner under section 182 and section 211 of the Indian Penal Code, to the Subdivisional Magistrate. The Subdivisional Magistrate directed that the case should be entered as false. The Subdivisional Magistrate thereupon tried the petitioner upon charges under sections 182 and 211 of the Indian Penal Code. The trial ended in conviction.

It has been held by this Court that a petition such as that presented by the petitioner to the Subdivisional Magistrate is a complaint. The latter should, therefore, either have made over the complaint to the Sub-Deputy Magistrate (not for inquiry and report but for disposal) or he should have examined the complainant himself, recorded reasons for distrusting the truth of the complaint, held the enquiry himself and then himself passed a formal order dismissing the complaint. The important points to notice are, *first*, that such a petition should always be treated as a complaint; and, *secondly*, that the petition should not be referred to another Magistrate for inquiry and report. If sent to another Magistrate, it must be sent for disposal. The other Magistrate can then, after inquiry and making a proper order dismissing the complaint, pass an order under section 476. The Code does not permit a Magistrate to refer a complaint to another Magistrate for inquiry and report. An order under section 476 made by the other Magistrate in such a case would be without jurisdiction. We have been somewhat particular in setting out the above details because the law on the subject is very imperfectly understood. In most subdivisions the magisterial staff consists of a Subdivisional Magistrate and a Sub-

Deputy Magistrate, and it is not unnatural that the Subdivisional Magistrate, knowing that he will have to try the charges under sections 182 and 211 himself, should send the case in the first instance to the Sub-Deputy Magistrate for inquiry and report. The motive is not improper but the procedure does not have the sanction of the Code, and it frequently gives rise to legal difficulties.

It has been held, however, by a Full Bench of this Court, in the case of *Queen-Empress v. Sham Lall* (1), that in such a case the Subdivisional Magistrate derives his jurisdiction to try the charge under section 211 not only from the order, if any, under section 476 but also from the police report. There can be no doubt, therefore, that the trial was with jurisdiction.

The Subdivisional Magistrate would have exercised a better discretion if he had acted in the manner which we have indicated above. But it is a matter of discretion not of statutory provision. There is no statutory provision requiring that such a petition shall be finally disposed of as a complaint before the prosecution under section 211 commences. Now after conviction a breach even of a statutory provision can be remedied by the application of section 537 of the Code of Criminal Procedure which says that, subject to the provisions of the Code, no sentence shall be reversed on revision on account of any error, omission or irregularity in the proceedings before trial, unless a failure of justice has *in fact* been occasioned. The words "in fact" have at the last amendment been added to the section to emphasize the reality of this requirement. We are quite unable to say that any failure of justice has in fact been occasioned in the present case. The rule is discharged.

E. H. M.

Rule discharged.

(1) (1887) L. L. R. 14 Calc. 707.