

CRIMINAL REVISION.*Before C. C. Ghose and Duval JJ.*

SHEIKH SAMIR

v.

SAJIDAR RAHMAN.*

1926

Feb. 25.

Complaint—Information to police repeated in complaint to Court—Prosecution under s. 211 of the Penal Code—Necessity of complaint by the Court which tried the original case—Criminal Procedure Code (Act V of 1898) ss. 195 (1)(b), 476.

Where an information was laid by the opposite party against the petitioner before the police, and the petitioner then filed a complaint against him under s. 211 of the Penal Code, before the Chief Presidency Magistrate, whereupon the opposite party lodged a complaint before the latter, based more or less on the same allegations as were contained in his information to the police, and both complaints were transferred to an Additional Presidency Magistrate who first tried the case against the petitioner and acquitted him, and then discharged the opposite party in the case under s. 211 of the Penal Code.

Held, that no prosecution was sustainable for the offence under s. 211 without the previous complaint of the Court which tried the case of the opposite party against the petitioner.

Brown v. Ananda Lal Mullick (1) followed.

The facts of the case were as follows. On the 18th February 1925 the opposite party, Sajidar Rahman, lodged an information before the Deputy Commissioner, Criminal Investigation Department, to the effect that the petitioners and others had, on 16th instant, snatched away two bags containing currency notes. The police submitted a report on the 2nd March, but as the petitioner was not found,

*Criminal Revision No. 125 of 1926, against the order of H. K. Deo Presidency Magistrate of Calcutta, dated Dec. 14, 1925.

the Deputy Commissioner ordered the petition to be filed. On the 9th April the petitioner filed a complaint before the Chief Presidency Magistrate against Sajidar, under s. 211 of the Penal Code, and process was issued. Sajidar thereupon filed a complaint before the said Magistrate on the 10th June against the petitioner, under ss. 403 and 420 of the Penal Code, based more or less on the same facts as were alleged in his information to the police. The Chief Presidency Magistrate transferred both complaints to Mr. H. K. De, Additional Presidency Magistrate, who first tried the case against the petitioner, and acquitted him on the 14th December 1925.

The petitioner then applied to Mr. De to proceed with his complaint against Sajidar under s. 211. The Magistrate, after hearing the parties, discharged Sajidar, on the 27th January 1926, under s. 253 of the Criminal Procedure Code. The petitioner then obtained the present Rule.

Babu Prabodh Chandra Chatterjee, for the petitioner.

Babu Mrityunjoy Chatterjee and *Babu Biraj Mohan Roy*, for the opposite party.

GHOSE AND DUVAL JJ. In this matter what has happened is this. The accused, Sajidar Rahman, made a complaint before the Deputy Commissioner of Police on the 18th February 1925, charging the petitioner and others with having, on the 16th February 1925, in front of the Registration Office on the north side of the Government House, snatched away two Government currency notes for Rs. 1,000 each. The police submitted a report on the 2nd March 1925, but the accused, Sajidar Rahman, not having been found in Calcutta, the Deputy Commissioner of

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Police ordered, on the 2nd April 1925, that the petition should be filed. On the 9th April the petitioner filed a complaint against the accused, Sajidar Rahman, under section 211 of the Indian Penal Code for having falsely and maliciously filed the said complaint before the Deputy Commissioner of Police. The Chief Presidency Magistrate issued process against Sajidar Rahman on the 4th May 1925. Thereupon Sajidar Rahman appeared and laid a complaint against the petitioner, on the 10th June 1925, and the petitioner was charged with offences under sections 420 and 403 of the Indian Penal Code. Both the cases were transferred to Mr. H. K. De, Presidency Magistrate, for trial. Mr. De, after taking evidence in the case against the petitioner acquitted him, under section 258 of the Criminal Procedure Code, on the 14th December 1925. The petitioner thereupon applied to the Magistrate that the case by him against the accused should be proceeded with. Mr. De, however, held that the case by the petitioner against the accused should not be proceeded with, having regard to what he had found in the counter case, and he thereupon discharged the accused, Sajidar Rahman, under section 253 of the Criminal Procedure Code.

It appears to us that the allegations in the two cases were more or less the same, and, therefore, no prosecution under section 211 of the Indian Penal Code is sustainable without complaint being first made by the Court which tried the case of the accused against the petitioner [See in this connection *Brown v. Ananda Lal Mullick* (1)]. On that short ground we are of opinion that this Rule fails, and we accordingly discharge it.

E. H. M.

Rule discharged.