APPELLATE CRIMINAL.

Before Lort-Williams and S. K. Ghose JJ.

SUPERINTENDENT AND REMEMBRANCER OF LEGAL AFFAIRS, BENGAL

v.

IJJATULLA PAIKAR.*

1930

Dec. 11, 12, 22.

Complaint—Complaint by the Sessions Judge in a case tried by the Additional Sessions Judge, if legal—Court of Session, what is—"Expedient in the interest of justice," if must be expressly found—Code of Criminal Procedure (Act V of 1898), ss. 9, 476.

There is only one Court of Session in each sessional division, sitting at different places and manned by a number of judges. When an offence of perjury is committed before one judge of a Court of Session, a complaint by any other judge of that Court is a valid complaint.

Queen-Empress v. *K. Kunjan Menon* (1), *Emperor* v. *Molla Fuzla Karim* (2), *Bai Kasturbai* v. *Vanmalidas Lakhmidas* (3) and *Bahadur* v. *Eradatullah Mallick* (4) referred to.

The absence from the record of an express finding, that it was expedient in the interests of justice that an enquiry should be made, will not necessarily invalidate the complaint. The court need not repeat the exact words of the section. It is sufficient if the record shows clearly that the court has applied its mind to the question of expediency and has come to a conclusion that an enquiry is expedient. A finding that there is a *prima facie* case or that statements are contradictory may not be sufficient. But a finding that the evidence given was false, followed by a complaint might be sufficient to raise the inference that the judge found that an enquiry was expedient.

Keramat Ali v. *Emperor* (5) explained.

Surendra Nath Jana v. *Kumeda Charan Misra* (6), *Bhuban Chandra Pradhan* v. *Emperor* (7) and *Satish Chandra Maulik* v. *King-Emperor* (8) referred to.

CRIMINAL APPEALS by the Government.

The material facts appear from the judgment of the Court.

The Officiating Deputy Legal Remembrancer, B. M. Sen (with him *Anilchandra Ray Chaudhuri*) for the Crown.

*Government Appeals, Nos. 7 and 8 of 1930, against the order of A. H. Chaudhuri, Subdivisional Officer of Bogra, dated May 26, 1930.

(1) (1888) 1 Mad. L. J. 397.
(2) (1905) I. L. R. 33 Calc. 193.
(3) (1925) I. L. R. 49 Bom. 710.
(4) (1910) I. L. R. 37 Calc. 642.
(5) (1928) I. L. R. 55 Calc. 1312.
(6) (1930) 51 C. L. J. 208.
(7) (1927) I. L. R. 55 Calc. 279.
(8) (1930) 52 C. L. J. 52.

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The orders of acquittal are mainly based on the ground that the complaints made by the Sessions Judge are illegal inasmuch as the case was heard by the Additional Sessions Judge. In the opinion of the trial court, the complaint should have been made either by the successor-in-office of the Additional Sessions Judge or the High Court to which such court was subordinate. The learned magistrate is entirely wrong in this respect, as he omitted to consider an important aspect of this question. According to section 9 of the Code of Criminal Procedure, the Court of Session is one court irrespective of the number of the judges exercising jurisdiction therein. A comparison of this section with section 6, which creates one court for each magistrate, and section 409, which shows that a Court of Session is something different from a Sessions Judge, clearly supports that contention. It was also so held in the case of *Queen-Empress* v. *K. Kunjan Menon* (1). The constitution of this Court is analogous to the Presidency Small Causes Court and the High Court, each consisting of several judges. In the absence of the judge actually trying the case, a complaint by any of the judges of the same court is legal and valid. The trial judge based his orders mainly on this ground. The cases should either be remanded or evidence gone into here and the accused convicted.

Nirmalkumar Sen (with him *Sureshchandra Talukdar*) for the accused respondent. The complaint should have been made either by the successor of the Additional Sessions Judge or the High Court. The Sessions Judge had no power to make the complaint. In any case, the complaint was invalid, as it did not record any finding that it was expedient in the interests of justice that a complaint should be made. *Keramat Ali* v. *Emperor* (2) and *Surendra Nath Jana* v. *Kumeda Charan Misra* (3). On the merits also the acquittal was justified. The magistrate found that, in the Court of Session, the matter was not

(1) (1888) 1 Mad. L. J. 397. (2) (1928) I. L. R. 55 Calc. 1312.
(3) (1930) 51 C. L. J. 208.

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properly explained to the accused and that explained the discrepancy in the two statements.

B. M. Sen in reply. The complaint need not contain any finding. The order of the Judge on which the complaint is based clearly shows that he considered the question and was of opinion that a complaint was necessary for the ends of justice. No particular words need be used. It is sufficient if the Judge applied his mind to it. *Bhuban Chandra Pradhan* v. *Emperor* (1).

Cur. adv. vult.

LORT-WILLIAMS J. These are appeals against the orders of the Subdivisional Officer of Bogra acquitting the two appellants of charges under section 193 of the Indian Penal Code.

The respondents were search witnesses in a case under section 395/411 of the Indian Penal Code.

Before the committing magistrate, on the 12th March, 1929, they deposed that certain ornaments had been found, that a search list had been made and signed by them, that labels had been attached to the ornaments, and that these also had been signed by them.

Before Mr. B. C. Chatterji, the Additional Sessions Judge of Pabna and Bogra, on the 19th September, 1929, they identified the search list, but said that they could not remember what ornaments had been found, and that they had signed some small pieces of paper, but could not say what had been done with them.

Consequently, Mr. B. C. Chatterji issued notices to the respondents to show cause why they should not be prosecuted for perjury under section 193 of the Indian Penal Code.

Mr. B. C. Chatterji made over his charge on the 23rd December, 1929, and the respondents showed cause before Mr. J. C. Lahiri, the Sessions Judge of Pabna and Bogra, on the 25th January, 1930, and on the 10th February, 1930, he made a formal complaint against the appellants. In this he stated as the

(1) (1927) I. L. R. 55 Calc. 279.

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ground of complaint, merely that the respondents intentionally made false statements. He did not say, in terms of section 476 (*1*) of the Code of Criminal Procedure, that he was of opinion that it was expedient in the interests of justice that an inquiry should be made. But in his order, which is recorded, he said, "The mere fact that conflicting statements "are made by a witness on different occasions does not "justify a prosecution for perjury, but such "prosecution is quite legitimate when it appears that "the conflict is due not to any loss of memory or the "like, but to some intended contrivance to defeat a "case already proved. * * * Such conduct on the "part of a witness to intentionally make false "statements should be legitimately made the subject "of prosecution. A complaint will therefore be "made."

On trial by the Subdivisional Officer of Bogra, the respondents stated that they had not willingly made false statements, that they had stated only what they remembered, and that any discrepancy was due to the interval of six or seven months which had elapsed between the making of the two statements.

Also they contended that the Sessions Judge had no power to make the complaint under section 476 (*1*), because the offence (if any) had been committed, not before this Court but before the Court of the Additional Sessions Judge.

The trial magistrate in his judgment stated that the respondents filed statements in which they had explained that their depositions before the Additional Sessions Judge were not properly explained to them, and that no specific questions had been put, whether the labels signed were attached to the ornaments. Thus it could not be said that the respondents had denied having stated that the labels were attached to the ornaments and that no other points in their statements were exceptionable. That apart from the question that the evidence had not been properly explained to the accused so as to make them realise their responsibility, and that their attention had not been drawn specifically to the actual point about

attaching the labels to the ornaments, there was a serious legal defect which had vitiated the trial. Then he went on to hold that the Sessions Judge had no power to make the complaint for the reasons already stated.

This is the first point which we have to decide, and, in our opinion, the magistrate was wrong. Under section 9 of the Criminal Procedure Code, the Local Government is empowered to establish a Court of Session for every sessions division and to appoint a Judge of such court and Additional Sessions Judges and Assistant Sessions Judges to exercise jurisdiction in such court, and to direct at what place or places the Court of Session shall sit.

Thus there is only one Court of Session in each sessional division, sitting at different places, and manned by a number of judges. The court is the Court of Session. It is not accurate to refer to the "Court of the Sessions Judge," and the "Court of the "Additional Sessions Judge" and so on, except colloquially. Just as in the High Court, we do not refer to the constituent Courts as the Courts of any particular Judge, either "permanent" or "additional."

The offence under section 193 of the Indian Penal Code was committed (if at all) before the Court of Session of Pabna and Bogra, and the complaint was made by a Judge of that Court.

If authority is required for such a self-evident proposition it will be found in the following cases: *Queen-Empress* v. *K. Kunjan Menon* (1), *Emperor* v. *Molla Fuzla Karim* (2), *Bai Kasturbai* v. *Vanmalidas Lakhmidas* (3), *Bahadur* v. *Eradatullah Mallick* (4).

The second point to be decided is whether the complaint was invalid because the judge omitted to record an express finding that, in his opinion, it was expedient in the interests of justice that an enquiry should be made.

We have been referred to *Keramat Ali* v. *Emperor* (5), where Rankin C. J. said that he looked in vain

(1) (1888) 1 Mad. L. J. 397.
(2) (1905) I. L. R. 33 Calc. 193.
(3) (1925) I. L. R. 49 Bom. 710.
(4) (1910) I. L. R. 37 Calc. 642.
(5) (1928) I. L. R. 55 Calc. 1312.

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for any such recorded finding, and set aside the order but not on that ground, and *Surendra Nath Jana* v. *Kumeda Charan Misra* (1), where Pearson J. seems to have regarded the above judgment of Rankin C. J. as an authority for the proposition that the recording of such an express finding is essential, and that the court's finding under section 476 cannot be inferred from the terms of its judgment or order.

In our opinion, although the provisions of the section are not mandatory but permissive, yet, if the court decides to make a complaint, it must record a finding that in its opinion it is expedient in the interests of justice that an enquiry should be made. Moreover, it would be convenient and would save the time of an appellate court if such finding were expressly recorded. But the absence from the record of an express finding, or a finding in the exact words of the section will not invalidate the complaint.

The court need not repeat the exact words of the section like a parrot. It is sufficient, if the record shows clearly that the court has applied its mind to the question of expediency, and has come to a conclusion that an enquiry is expedient. A finding merely that there is a *prima facie* case, or that statements were contradictory, as in the two cases mentioned above, will not be sufficient. It is not in every one of such cases that an enquiry is expedient in the interests of justice. But a finding that the evidence given was false, followed by a complaint, might be sufficient to raise the inference that the Judge found that an enquiry was expedient. See *Bhuban Chandra Pradhan* v. *Emperor* (2) *per* C. C. Ghose, J., and the view which we have expressed seems to have been adopted by Pearson J. in the later case of *Satis Chandra Maulik* v. *King-Emperor* (3), and finds some support also in the judgment of Rankin C. J. in *Keramat Ali's* case (4).

So far as concerns the present appeals, we are of opinion that there is on the record a finding sufficient to satisfy the provisions of the section. The learned

(1) (1930) 51 C. L. J. 208.
(2) (1927) I. L. R. 55 Calc. 279, 284.
(3) (1930) 52 C. L. J. 52.
(4) (1928) I. L. R. 55 Calc. 1312.

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Judge states quite clearly that mere conflict between different statements is not sufficient, but that when it appears that the conflict is due not to loss of memory or the like but to deliberate falsehood, prosecution is legitimate, and therefore he makes the complaint.

This is equivalent to a finding that an enquiry is expedient in the interests of justice.

Finally, it was contended by the Crown that the magistrate did not acquit the accused upon the merits, and that the case should be sent back to him for further consideration. Alternatively, that upon the evidence the accused ought to have been convicted.

In our opinion, it is clear that the magistrate acquitted the accused upon the merits, as well as upon the point of law which was raised, and we see no reason to interfere with his decision.

These appeals, therefore, are dismissed.

S. K. GHOSE J. I agree.

Appeals dismissed.

A. C. R. C.