CRIMINAL REFERENCE.

Before Cuming J.

EMPEROR

v.

BAHARALI BISWAS.*

1930

Dec. 17.

False charge, prosecution for, without first enquiring into truth of original complaint, if maintainable—Opportunity of proving truth in defence, if sufficient—Indian Penal Code (Act XLV of 1860), s. 182.

A prosecution under section 182 of the Indian Penal Code for laying a false charge at the police station, which on investigation is found to be unfounded, is maintainable, though the magistrate refuses the informant's petition for examining his witnesses and for judicial enquiry into the charge laid by him on the ground that he might prove his case and adduce the defence evidence at the trial.

Neither the Indian Penal Code, nor the Criminal Procedure Code, provides that before a magistrate can enquire into a case under section 182, Indian Penal Code, on the complaint of a police officer, the accused person must have an opportunity of proving his case; he would have an ample opportunity of proving it when he would be called on to enter upon his defence.

Queen Empress v. *Sham Lall* (1) and *Isser* v. *King Emperor* (2) discussed and distinguished.

CRIMINAL REFERENCE.

The facts appear sufficiently from the judgment.

No one appeared in support of the Reference.

Anilchandra Ray Chaudhuri for the Crown.

CUMING J. This is a Reference by the learned Sessions Judge of Nadiya, in the case of one Baharali Biswas, who has been convicted under section 182 of the Indian Penal Code, and sentenced to pay a fine of Rs. 50. The facts of the case are briefly as follows: Some time in 1929, Baharali, the present petitioner, lodged information at the *thânâ*, in which he stated that certain articles belonging to his master,

*Criminal Reference, No. 151 of 1930.

(1) (1887) I. L. R. 14 Calc. 707. (2) (1910) 14 C. W. N. 765.

1930

Emperor
v.
Baharali Biswas.

Cuming J.

the *zemindâr*, had been stolen and that he suspected a certain *pâik* of his as having been concerned in the theft. The police, after investigation, came to the conclusion that the information was false and that really it was the petitioner himself who was concerned in the theft; and, on the complaint of the Sub-Inspector of police, summons was issued against the petitioner under section 182, Indian Penal Code, for appearance on the 24th March, 1930. On that date, the accused petitioner appeared and filed a petition definitely alleging that the police had not held any proper investigation and had not examined any witnesses on the petitioner's side and had reported his case to be false on account of their being dissatisfied with him for some reason or other and he prayed that his witnesses might be examined by the magistrate and a local investigation might also be held, if necessary. The magistrate, who then had the cognizance of the case, refused his petition, pointing out that the petitioner might prove his case while adducing the defence evidence at the trial. The magistrate then proceeded to hear the case under section 182, Indian Penal Code, and convicted the petitioner. The petitioner then moved the learned Sessions Judge and the learned Sessions Judge has referred the case to this Court, recommending that the order convicting the petitioner should be set aside on two grounds, first of all, the petition, dated the 24th March, 1930, filed by the present petitioner before the magistrate, praying for a judicial enquiry in his case, amounted to a petition of complaint and the learned magistrate was wrong in not taking proper cognisance of it and disposing of it in accordance with law; and, secondly, that, although the learned magistrate had jurisdiction to prosecute the accused petitioner under section 182, Indian Penal Code, on the complaint of the police officer who had submitted a final report, declaring the petitioner's case to be false, the magistrate failed to exercise a sound judicial discretion in summoning the petitioner straight away on the complaint of the police, without

giving the petitioner an opportunity to prove his case. Now, it is quite clear that the learned Sessions Judge's contentions have no basis whatever in the law that will be found in the Indian Penal Code. Neither the Indian Penal Code nor the Criminal Procedure Code provides that before a magistrate can enquire into a case under section 182, Indian Penal Code, on the complaint of a police officer, the accused person must have an opportunity of proving his case. There is no such provision in the law. Nor do I think that such a provision is necessary, for it is perfectly clear that the accused person in such a case would have an ample opportunity of proving it when he would be called on to enter upon his defence. Obviously, it would be a waste of time to allow the accused person to prove his case before he is called on to answer a charge under section 182, Indian Penal Code. That would be to go through the same operation twice. I am prepared to say that it cannot be said for one moment that the magistrate, in refusing to hold such an enquiry and in summoning the petitioner straight away on the complaint of the police officer, has not exercised a sound discretion. I am equally prepared to say that, even though the magistrate has not exercised a sound judicial discretion, that would not be an error of law. At the highest, it might be an error of discretion and an error of discretion, to my mind, is not an error of law. The Code does not provide for any such enquiry or any such opportunity being given to the accused person. I always prefer the Code and I also find it safer to be guided by the provisions of the Code and not by the idiosyncrasies of individual judges.

The learned judge has relied upon two decisions of this Court in support of the view which he asked this Court to take. One is the case of *Queen Empress* v. *Sham Lall* (1), a decision of the Full Bench. If I understand this decision rightly, what the Full Bench would seem to lay down is that the magistrate should not take cognisance of an alleged offence under

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

1930

Emperor v. *Baharali Biswas.*

Cuming J.

sections 191 and 192, Indian Penal Code, until the alleged offender has had an opportunity of supporting the original charge or abandoning it in due course of law. That is not the same as to say that if the magistrate does not do so and the accused person is convicted that conviction is illegal. With the greatest respect, I would regard the decision in the case of *Queen Empress* v. *Sham Lall* (1) as merely laying down what at the highest are really pious hopes. The other decision to which I have been referred is the case of *Isser* v. *King-Emperor* (2). That case does not, of course, lay down the proposition that if a person is convicted under section 182, Indian Penal Code, without being allowed a preliminary opportunity of showing that his case is true, that the conviction under section 182 is bad in law. What the learned Judges there remark is as follows: "In our opinion they had a right to have "their case investigated and the truth or falsity of "the charge determined in a proper tribunal." With that proposition I entirely agree. Surely the accused persons have a right to have their cases investigated and the truth or falsity of the charges determined in a proper tribunal. It hardly required a decision of this Court to decide this somewhat elementary proposition. This was done in the present case, because the case was heard judicially by the magistrate and the accused was convicted. It cannot, therefore, be said for one moment that the magistrate has refused to take his evidence. As far as I can see, what the case of *Isser* v. *King-Emperor* (2) lays down is that the magistrate must not refuse to take evidence of the accused person, with which proposition I entirely agree. In the present case, as I have already pointed out, the evidence adduced on behalf of the accused person was taken. Neither of these decisions lays down the proposition that a conviction under section 182, Indian Penal Code, is bad in law, because the accused has been given no opportunity of showing whether his case is true or false before he is

(1) (1887) I. L. R. 14 Calc. 707. (2) (1910) 14 C. W. N. 765.

put on his trial. I am prepared to say that, in view of the express provisions of law, it would be very difficult for any Court to lay down any such proposition.

The Reference is, therefore, rejected.

Reference rejected.

A. A.