

CRIMINAL REVISION.

Before Lord-Williams and Mallik JJ.

ABDUL HAKIM KHAN CHAUDHURI

v.

EMPEROR.*

1931

*April 15 ;
May 19.**False charge—Allegations, when amount to a false charge—Indian Penal Code (Act XLV of 1860), s. 211.*

For an allegation to amount to a false charge, as contemplated under section 211 of the Indian Penal Code, it must be made with the intention and object of setting the criminal law in motion. A false petition to the Superintendent of Police, praying for the protection of the petitioners from the oppression of a Sub-Inspector, which may be effected by some departmental action, does not amount to such a false charge.

Rayan Kutti v. Emperor (1) referred to.

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The material facts appear from the judgment.

Debendranarayan Bhattacharya and Nirmalkumar Sen for the petitioner.*B. M. Sen* for the Crown.

MALLIK J. Three persons, Mandir Sarkar, Bhadu Mandal and Kafiluddin Mandal sent a petition to the Superintendent of Police, Rajshahi, and Abdul Hakim Khan Chaudhuri, the petitioner before us, who was a typist in the District Judge's Court there, was the person who typed that petition. In this petition to the Superintendent of Police, there were some allegations of extortion and bribery against a police sub-inspector, one Mahammad Yeadali Fakir, and the petition ended with the prayer that the Superintendent of Police might protect the men so that they would not be oppressed. The Superintendent of Police sent the petition to the District Magistrate for an enquiry. An enquiry was

*Criminal Revision, No. 1312 of 1930, against the order of G. G. Hooper, Sessions Judge of Rajshahi, dated Dec. 2, 1930.

held and the sub-inspector, Yeadali Fakir, was put on his trial under section 384 of the Indian Penal Code, but was ultimately acquitted. Thereupon, the trying magistrate made an order under section 476 of the Code of Criminal Procedure complaining to the magistrate against the present petitioner and the three signatories to the petition before the Superintendent of Police for their prosecution under sections 211 and 182 of the Indian Penal Code. It is against this order that the present Rule was directed.

This Rule should, in my opinion, be made absolute. Section 182 of the Indian Penal Code is one of the sections mentioned in section 195 (1) (a) of the Code of Criminal Procedure and, under that section, no cognisance can be taken of an offence under section 182 except on the complaint in writing of the public servant before whom the false information is given or some other public servant to whom he is subordinate. In the present case the false information was given to the Superintendent of Police, but no complaint in writing was made to the magistrate either by the Superintendent of Police or by any other officer to whom the Superintendent of Police was subordinate.

As regards the offence under section 211 of the Indian Penal Code, it is settled that as the police have no power to take any proceedings in non-cognisable cases without the order of a magistrate, a false charge of such an offence made to the police is not an institution of criminal proceedings. Bribery and extortion are both non-cognisable offences and that being so, the false charge of bribery and extortion that was made to the Superintendent of Police was not an institution of criminal proceedings. Now, whether the allegation made before the Superintendent of Police amounted to a false charge as contemplated under section 211 of the Indian Penal Code would depend on whether the person, who made the allegations, made them with

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the intention and object of setting the criminal law in motion against the person against whom the allegations were directed: *Rayan Kutti v. Emperor* (1). Having regard, however, to the language of the statements and the circumstances in which they were made, I do not think it can be said with any degree of certainty that the object and intention of the men, who made the petition to the Superintendent of Police, was to set the criminal law in motion against the sub-inspector of police. The prayer made to the Superintendent of Police was to protect them from the oppressions of the sub-inspector and for aught that we know this could be effected by the Superintendent of Police by punishing him departmentally, by transferring him to some other station or by some other act of a like nature, without putting him on trial in a criminal court. The allegation made to the Superintendent of Police to the effect that the sub-inspector had committed bribery and extortion, did not, in my opinion, in the circumstances of the present case, amount to a false charge as contemplated in section 211 of the Indian Penal Code.

The Rule is, accordingly, made absolute and the proceedings against the petitioner are quashed.

LORT-WILLIAMS J. I agree.

Rule absolute; proceedings quashed.

A. C. R. C.

(1) (1903) I. L. R. 26 Mad. 640.