CRIMINAL REVISION.

Before Bartley and Henderson JJ.

1938

Dec. 9.

JAMINI KANTA GHOSH

v.

BHABA NATH JAISHI BARMAN.*

Complaint—Complaint by the Magistrate dealing with a nârâji *petition, when necessary—*Nârâji *petition, when amounts to a complaint—Indian Penal Code (Act XLV of 1860), s. 211.*

When the police submits a final report in a case on the ground that the information lodged at the police station was false and prays for the prosecution of the informant under s. 211 of the Indian Penal Code and the Magistrate takes cognizance thereof before a *nârâji* petition is filed impugning the police report, a complaint by the Magistrate dealing with the *nârâji* petition is not necessary for the trial of the case under s. 211.

Brown v. *Ananda Lal Mullick* (1) distinguished.

Superintendent and Remembrancer of Legal Affairs, Bengal v. *Biswambhar Brahmin* (2) and *Subhag Ahir* v. *King-Emperor* (3) followed.

The word "*nârâji*" is often loosely used. A petition filed by a person in showing cause against his prosecution under s. 211 of the Indian Penal Code for lodging a false information at the police station, asserting that the case of the informant was true, but without making a complaint against anybody or asking the Magistrate to investigate it, was not a *nârâji* petition amounting to a complaint.

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The case for the prosecution *inter alia* was that, on December 22, 1937, the accused petitioner went to the house of one Bhaba Nath Jaishi Barman, who was his acquaintance, and asked the latter for shelter for the night. The accused slept in the same room with Bhaba Nath. At night, the accused was found near Bhaba Nath's bed with his hand under the pillow of his wife. Thereupon, it was said that he was beaten

*Criminal Revision, No. 705 of 1938, against the order of H. C. Stork, Sessions Judge of Assam Valley Districts, dated June 11, 1938, confirming the order of B. N. Kakati, Magistrate, First Class of Tezpur, dated May 17, 1938.

(1) (1916) I. L. R. 44 Cal. 650. (2) (1929) I. L. R. 56 Cal. 1041.
(3) (1931) I. L. R. 11 Pat. 155.

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by Bhaba Nath. Next morning, the petitioner lodged an information at the local police station charging Bhaba Nath with having robbed the petitioner of money. An investigation followed and, on January 20, 1938, the police submitted a report to the effect that the information was false and prayed for the prosecution of the accused under s. 211 of the Indian Penal Code. The Magistrate took cognizance on the same day and issued a notice on the accused to show cause why he should not be prosecuted for the false information. On February 2, 1938, the accused, in showing cause, filed a petition in which he stated that his case was true, but he made no complaint against anybody nor prayed that the Magistrate should investigate it. When, however, he was asked to prove his case, he could produce no evidence. The trial thereafter took place and he was convicted under s. 211 of the Indian Penal Code and sentenced. An appeal to the Sessions Judge of the Assam Valley District was dismissed. The accused thereupon obtained the present rule.

Suresh Chandra Talukdar and *Sudhangsu Bhusan Sen* for the petitioner.

The Officiating Deputy Legal Remembrancer, Debendra Narayan Bhattacharyya for the Crown.

HENDERSON J. This is a Rule calling upon the Deputy Commissioner, Tejpur, to show cause why the conviction of the petitioner under s. 211 of the Indian Penal Code should not be set aside.

The relevant facts are as follows: The petitioner was given shelter for the night in the house of the prosecution witness Bhaba Nath. In course of the night, he attempted to take advantage of Bhaba Nath's wife. As a result of this, he was beaten by Bhaba Nath. He then went to the police station and brought an entirely false charge of robbery against Bhaba Nath. The police reported the case to be a false one and prayed for the prosecution of the petitioner under s. 211 of the Indian Penal Code.

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The Magistrate called upon the petitioner to show cause why he should not be prosecuted, and the petitioner then filed what is known as a "*nârâji* "petition". The case then proceeded to trial and the petitioner was in due course convicted. His appeal to the Sessions Judge was unsuccessful.

This Rule was issued on three grounds: (i) that the sanction of the Magistrate who dealt with the *nârâji* petition was necessary before a prosecution could be started; (ii) that it was improper to proceed with the trial until the *nârâji* petition was disposed of; and (iii) that the sentence is unduly severe.

I will deal with the third ground first. Now we have been through the record, and we are satisfied that the case is a very serious one and there is no ground which would justify our interference with the sentence.

There is ample authority in support of the first two grounds. If the former is established it will be fatal to the trial. In the latter case it would not always be necessary to order a retrial.

In connection with the first ground, I need only refer to the case of *Brown* v. *Ananda Lal Mullick* (1). There can be no doubt that the effect of this decision is that if the complainant, after the police submitted a final report, had filed a complaint before the Magistrate, sanction of that Magistrate would be necessary before he could be put upon his trial.

But the present case comes within quite a different category. It is to be noticed that, in the case dealt with by Sanderson C. J. and Walmsly J., there had been no prayer by the police for the prosecution of the petitioner. In the present case, there was such a prayer, and the Magistrate actually took cognizance of the case before the petitioner appeared on the scene at all. In this connection I should like

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to refer to the case of *Superintendent and Remembrancer of Legal Affairs, Bengal* v. *Biswambhar Brahmin* (1) where the matter is fully discussed. A similar view was taken by the Patna High Court, in the case of *Subhag Ahir* v. *King-Emperor* (2). Though in this latter case these remarks are in the nature of an *obiter dictum* we agree with the reasoning of the learned Judges therein. The result is that both these grounds must fail.

It is also apparent that, on the facts, there is nothing really to justify an argument that sanction would be necessary in any circumstances. The word "*nârâji*" is often loosely used, and it is necessary to examine the petition which is actually filed in any particular case. We have done so, and we have found that all that the petitioner did was to show cause against his prosecution. He asserted that the case was a true one, and that he was perfectly innocent. He never made a complaint against anybody or asked the Magistrate to investigate it.

The learned Magistrate, however, overlooking the real nature of the petition examined the petitioner on oath and gave him an opportunity of proving his case. The petitioner made no attempt to avail himself of this opportunity; he never appeared and he never produced any witnesses. In these circumstances, if the learned Magistrate was of opinion that the *nârâji* petition was a petition of complaint, the only course which he could possibly take, was to dismiss it under s. 203 of the Code of Criminal Procedure. It would, therefore, be perfectly idle to contend that the *nârâji* petition had not been properly disposed of.

We, accordingly, discharge the Rule. The petitioner must surrender to his bail and serve out the remainder of his sentence.

BARTLEY J. I agree.

Rule discharged.

A. C. R. C.

(1) (1929) I. L. R. 56 Cal. 1041. (2) (1931) I L. R. 11 Pat. 155.