

APPELLATE CRIMINAL.

Before Mr. Justice Miller and Mr. Justice Tottenham.

ASHROF ALI AND ANOTHER (PRISONERS) *v.* THE EMPRESS
(RESPONDENT).*

1879
June 24.

Falsa Charge—Penal Code, ss. 211 & 109—Charge laid before Police Officer.

There is nothing in s. 211 of the Penal Code which limits the penalty there imposed to cases in which attempts have been made to substantiate false charges in a Court of Justice.

A false charge made before the police is therefore punishable under this section.

ON the 16th November 1878, one Ashrof Ali preferred a charge at the police station against one Batai, of stealing money from a box which belonged to him, but which had been placed in a room occupied by one Gulzar Khan. Gulzar Khan accompanied Ashrof Ali to the police station, and the charge was made on the authority of what Gulzar told Ashrof. The case was enquired into and reported to the Joint Magistrate, who on the report found that the charge was false, and ordered that Ashrof and Gulzar should be committed for concocting a false charge. This was done, and Ashrof and Gulzar were charged, the former under s. 211 of the Penal Code, and the latter with abetment of the same offence; and the result was, that the Sessions Judge convicted Ashrof under s. 211 of the Penal Code, and Gulzar, under s. 109 of the Penal Code, for the abetment of an offence under s. 211, and sentenced them to three years' rigorous imprisonment.

The prisoners appealed to the High Court.

Mr. *R. E. Twidale*, for the appellants, contended, that the conviction and sentence were bad, inasmuch as the original complaint made by Ashrof and Gulzar had not been tried, nor

* Criminal Appeals, Nos. 326 and 304 of 1879, against the order of J. B. Worgan, Esq., Sessions Judge of Sarun, dated the 22nd of April 1879.

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had any order of dismissal been recorded; and that in any case the sentence passed was too severe.

The judgment of the Court was delivered by

MITTER, J. (TOTTENHAM, J., concurring).—On behalf of the appellants a question of law has been raised before us. It has been contended, that the whole proceedings in this case are illegal, because the appellants were allowed no opportunity to substantiate their charge in any Criminal Court. In support of this contention several decisions of this Court have been cited before us. These cases seem to us to be distinguishable. In all these cases proceedings were commenced by the accused person in a Court. It has been held in these cases that no sanction should have been given for a prosecution against him under s. 211 of the Indian Penal Code without giving him the full opportunity of substantiating his charge. In this case no formal complaint was made by the appellants before any Criminal Court. The charge of theft was made to a police officer, who reported it to be false. The appellants did not renew this charge before any Criminal Court. We do not think that there is any force in the contention raised before us, and that the decisions relied upon do not lend any support to it.

Nor is there anything in s. 211 of the Code limiting the penalty to cases in which attempts have been made to substantiate false charges in Courts of Justice. A false charge laid before the police, and never intended to be prosecuted in Court, may obviously subject the accused party to very substantial injury, as defined in s. 44 of the Penal Code.

We therefore affirm the conviction of both the prisoners; but, considering that the sentence of three years' rigorous imprisonment is, under the circumstances, unnecessarily severe, we reduce the term to eighteen months in the case of each of the appellants.

Appeal dismissed.