1878

NEW BEER-BHOOM COAL CO. v. BULORAM MAHATA.

tion; and the Court have therefore no means of ascertaining by the ordinary method what rent or bonus the plaintiffs should pay.

For these reasons we are of opinion, that, upon this ground alone, apart from the other objections which have been taken, and upon which we give no opinion, that this appeal must be dismissed with costs as against all the defendants.

Appeal dismissed.

Attorneys for the appellants: Messrs. *Roberts, Morgan, & Co.*

Attorneys for the respondents: Messrs. *Sanderson & Co.*

APPELLATE CRIMINAL.

Before Mr. Justice Ainslie and Mr. Justice Broughton.

1879
April 26.

BHOKTERAM (COMPLAINANT) *v.* HEERA KOLITA (ACCUSED).*

Penal Code (Act XLV of 1860), *ss.* 182, 211—*Preliminary Enquiry—Act X of* 1872, *s.* 471.

An offence under s. 211 of the Penal Code includes an offence under s. 182; it is, therefore, open to a Magistrate to proceed under either section, although, in cases of a more serious nature, it may be that the proper course is to proceed under s. 211; see *Raffee Mahomed v. Abbas Khan* (1).

REFERENCE to the High Court under s. 296 of Act X of 1872.

One Heera brought a charge of theft against Bhokteram at the police thanua. The police, after investigation, reported the case to be false. Thereupon Bhokteram instituted before the Assistant Commissioner a charge against Heera under s. 211 of the Penal Code.

The Assistant Commissioner, without first giving Heera an opportunity of proving his case against Bhokteram in Court, if he wished to do so, placed him on his trial on a charge under

* Criminal Reference, No. 16 of 1879, made by W. E. Ward, Esq., C. S., Judge of the Assam Valley Districts, dated the 10th April 1879.

(1) 8 W. R., Crim., 67.

s. 182; and after a summary trial convicted him, and sentenced him to three months' rigorous imprisonment. The District Judge, on the case coming up before him, at the request of the prisoner, referred the case to the High Court, there being no appeal from the Assistant Commissioner's decision. He was of opinion that the proceedings of the Assistant Commissioner should be quashed, inasmuch as the prisoner had been tried summarily on a charge different from that which the complainant had brought against him; and because, it was in his opinion, illegal to put the prisoner on his trial without giving him an opportunity of proving, that Bhokteram had in reality committed the theft charged against him.

No one appeared to argue the case.

The opinion of the Court was delivered by

AINSLIE, J. (BROUGHTON, J., concurring).—The prisoner in this case laid an information at the police thanna against Sadheram, Bhokteram, and two others, stating that he suspected them of committing a robbery in his house. The police officer investigated the case, and being of opinion that the information was false, so reported to the Assistant Commissioner. The Assistant Commissioner on the report passed an order of dismissal, purporting to do so under s. 147 of the Criminal Procedure Code. This the Assistant Commissioner should not have done; no complaint had been made to him by the present prisoner, nor could the report of the police officer be regarded as a complaint for this purpose, for he had reported that the information was false. Bhokteram then applied to the Assistant Commissioner for leave to prosecute the prisoner under s. 211 of the Indian Penal Code.

No such leave or sanction was necessary, the offence, if there was one, was not committed before any Court; see s. 468 of the Criminal Procedure Code, and the case of the *Government of Bengal* v. *Gokool Chunder Chowdry* (1) and *Ram Runjan Bhandari* v. *Madhub Ghose* (2). The Assistant Commis-

(1) 24 W. R., Crim., 41. (2) 25 W. R., Crim., 33.

1879

BHOKTERAM v. HEERA KOLITA.

sioner did not accord or withhold sanction, but referred the case to the Deputy Commissioner, a course equally unnecessary for a prosecution under s. 211.

The Deputy Commissioner said, that "If the Assistant Commissioner is satisfied that Heera gave false information to the police intending to injure Bhokteram, he can, on Bhokteram's application, try the case under s. 182, Penal Code."

As no authority from the Deputy Commissioner was required in order that the prosecution might proceed under s. 211, this must be regarded either as a mere piece of advice, which, however, the Assistant Commissioner was right to ask if he felt any difficulty, and the Deputy Commissioner was right to give, or as a sanction under s. 467, which requires the sanction of the official superior of the public servant against whom an offence under s. 182 has been committed. The document may be read in two ways. Either that the application of Bhokteram for sanction to prosecute was sufficient to enable the Assistant Commissioner to proceed and try the case under s. 182, Penal Code, or that if Bhokteram made another application, *i.e.*, a complaint, the Assistant Commissioner might safely proceed to try the case under that section.

The Assistant Commissioner seems to have read it in the former sense. He issued a summons to Heera to take his trial under s. 182, Penal Code, and directed the police to produce the necessary evidence. Bhokteram appeared and gave evidence, and the prisoner was convicted and sentenced to three months' rigorous imprisonment under s. 182, Penal Code.

Bhokteram does not complain now that he was not allowed to go on with his prosecution under s. 211. But the prisoner, there being no appeal, applied to the Sessions Judge to refer the case to the High Court on two grounds: (i) that he ought to have been tried under s. 211, and not under s. 182, Penal Code; (ii) because it was illegal to put him on his trial without giving him an opportunity of proving his case,—*i.e.*, that there really was a theft in his house, and that Bhokteram and Shadiram and the others were *bonâ fide* suspected of the theft; and the Sessions Judge thinks that there ought to have been a preliminary enquiry.

1879

BHOKTERAM v. HEERA KOLITA.

With regard to the first question, the offence under s. 211. includes an offence under s. 182, and there was no reason why, in a case of this nature, proceedings should not be taken under either section, although it may be, that in cases of a more serious nature the proper course would be to proceed under s. 211.

The case of *Raffee Mahomed* v. *Abbas Khan* (1) was such a case; it could not be dealt with by a Magistrate.

With regard to the second objection, s. 471 directs that there shall be a preliminary enquiry before any person can be committed for trial by the Court itself, or sent by the Court to a Magistrate, the object of such an enquiry being, that the Court may be satisfied that there are good grounds for believing that the offence has been committed. When the prosecution is not undertaken by the Court itself, the power entrusted to the Court, or to the superior officer of the public servant, is intended to be used for the purpose of preventing persons having business before Courts, or public officers, from being harassed by vexatious and groundless prosecutions; and that power is to be exercised by giving or withholding sanction. Here the superior officer has given sanction to the prosecution, and although the "Court" and the superior officer to the public servant may be in some cases one and the same person, it is only when the case arises out of proceedings before him sitting as a Court, civil or criminal, that s. 471 can apply.

It follows, therefore, that we do not think that we ought to interfere on the ground put forward by the Sessions Judge. But as we have the record before us, and observe that the prisoner Heera has been convicted, on what appears to us to be no evidence whatever, except the bare statement of the person originally accused, we think that the conviction ought to be set aside on that ground under the provisions of s. 297 of the Criminal Procedure Code.

Conviction set aside.

(1) 8 W. R., Crim., 67.