

APPELLATE CRIMINAL.

Before Mr. Justice Cunningham and Mr. Justice Prinsep.

1881
April 6. IN THE MATTER OF GYAN CHUNDER ROY AND OTHERS (PETITIONERS) v.
PROTAP CHUNDER DASS (OPPOSITE PARTY).*

False Charge—Dismissal of Complaint—Prosecution under s. 211 of Penal Code (Act XLV of 1860)—Criminal Procedure Code (Act X of 1872), ss. 144, 147, 468, 470 and 471.

Where a charge had been preferred against a person, and the Magistrate, before whom it was heard, after hearing the statement of the complainant, but not those of his witnesses, dismissed the complaint, and subsequently, on the application of the person charged, granted him leave under s. 470 to prosecute the complainant for bringing a false charge :

Held, that the proceedings were not irregular, and that the Magistrate was justified in acting as he had done.

Held also, that there is a distinction in the proceedings to be adopted when a sanction is given under s. 470, and the institution by the Court of its own motion of proceedings under s. 471.

Syed Nissar Hossein v. Ramgolam Sing (1) dissented from (2).

In this case the petitioner, Gyan Chunder Roy, made a complaint to the police, which, after investigation, was reported to the Magistrate as false. Gyan Chunder then repeated his complaint before the Magistrate, who examined him under s. 144 of the Code of Criminal Procedure, and dismissed the complaint under s. 147. A fortnight later, the person accused applied to the Magistrate, and obtained sanction to prosecute the complainant for having falsely charged him. Proceedings were thereupon commenced before another Magistrate, who, on the 20th December, committed the petitioner to the Court of Session. The petitioner then applied to the High Court to have the order, dismissing his complaint, set aside, and the order sanctioning the criminal prosecution and the proceedings

Criminal Motion, No. 2 of 1881, against the order of T. E. Coxhead, Esq., Officiating Magistrate of Dacca, dated 18th November 1880.

(1) 25 W. R., Cr. Rul., 10.

(2) See, however, *In the matter of Sohkhina Bibee*, ante, p. 87.

taken thereunder, quashed, on the ground that the Magistrate was not competent to dismiss the complaint or to sanction the prosecution [under s. 211 of the Indian Penal Code] without first examining all the witnesses offered to prove it.

A rule was accordingly issued, calling on the opposite party to show cause why these orders should not be set aside.

Mr. *M. Ghose*, Mr. *Evans*, Baboo *Doorga Mohun Dass*, and Baboo *Lall Mohun Dass*, in support of the rule.

The *Advocate-General* (Mr. *Paul*), Mr. *Branson*, and Baboo *Baikunt Nath Dass* showed cause.

The judgments of the Court (CUNNINGHAM and PRINSEP, JJ.) were as follows :

CUNNINGHAM, J.—The question raised in this case is the competence of a Magistrate, under s. 147 of the Criminal Procedure Code, to dismiss a complaint; and, under s. 468 of the Code, to sanction the prosecution of the complainant for making a false charge, without hearing the complainant's evidence. I see no reason to question the legality of the Magistrate's proceeding. Section 147 empowers the Magistrate to dismiss the complaint, if, after examining the complainant, there is, in his judgment, no sufficient ground for proceeding; and there is nothing in s. 468 to indicate that any particular proceeding on the part of the Court giving the sanction is essential to its validity,—such as, for instance, is necessary in the case of a Court committing a case or sending it for inquiry under s. 471. I am unable to concur in the opinion expressed on this point in *Syed Nissar Hossein v. Ramgolam Singh* (1). The application must be rejected.

PRINSEP, J. (after stating the facts as above, continued):—Several cases decided by this Court have been cited by Mr. *M. Ghose* in support of his contention; but it appears to me that, with the exception of one case, *Syed Nissar Hossein v. Ramgolam Sing* (1), none of them are precisely in point.

There is clearly a distinction between a sanction given under

(1) 25 W. R., Cr. Rul., 10.

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s. 470 of the Criminal Procedure Code and the institution of proceedings by a Court of its own motion, which is provided for by s. 471. The case now before us is one coming under s. 470, which refers to private prosecutions, under leave obtained, for certain offences specified in ss. 467, 468, and 469. Before sanction to prosecute can properly be given, it is necessary that the proceedings on the original complaint should have terminated in a regular manner. The Court should then consider, as has been pointed out in the cases of *The Queen v. Mahomed Hossain* (1) and *Radha Nauth Banerjee v. Kangalee Mollah* (2), whether there are good grounds for the application made to it, or whether it has been made solely for the purpose of oppressing and harassing an adversary and preventing him from taking any further legal steps to which he may be entitled, as has been pointed out also in the case of *The Queen v. Baijoo Lall* (3): "It is by no means, in every instance in which a party fails to prove his case, that the Judge, who has decided against such party, is justified in exercising the power given him by this section. So long as it is a case as to which there is any possible doubt, or in which it is not perfectly certain that the Judge's decision must be upheld in the event of there being an appeal in the civil suit, the Judge acts indiscreetly and wrongly, if, the moment he has given his judgment in the civil suit, he exercises the power given him by this section. At the same time if, in the course of the civil trial, the Judge has before him clear and unmistakable proof of a criminal offence, and if, after the trial is over, he, on consideration, thinks it necessary to proceed at once, of course it may be right to do so. Judges should, however, bear in mind that criminal prosecutions are frequently suggested by successful litigants merely to prevent an appeal in the civil suit; and they should be careful not to lend themselves to such suggestions too readily. They should also recollect that when they proceed under s. 471, the responsibility for the prosecution rests upon the Judge entirely; such a prosecution being a very different thing from a prosecu-

(1) 16 W. R., Cr. Rul., 37.

(2) Marsh., 407.

(3) I. L. R., 1 Cal., 450; see p.

455.

tion instituted on the complaint of a private party and merely sanctioned by the Court under s. 468." In the cases cited before us,—that is to say, *The Queen v. Gour Mohun Singh* (1), *Ashrof Ali v. The Empress* (2), and *In re Russick Lall Mullick* (3),—prosecutions were ordered simply on the report of the police that the complaints made had, on investigation, been found to be false. In all these cases, and also in the case of *The Empress v. Karimdal* (4), recently decided by Garth, C. J., and Field, J., on the 9th December 1880, the Court has pointed out the impropriety of acting solely on the report of the police, and without having considered the statement of the complainant or the evidence tendered by him. In the cases of *The Queen v. Heera Lall Ghose* (5) and *In re Gangoo Singh* (6), the Magistrate had commenced to hear the evidence tendered by the complainant and closed the proceedings summarily without hearing all the witnesses cited, so as to make the order of discharge an improper order within the terms of s. 215, expl. iii of the Code of Criminal Procedure. These are cases very different from the case now before us, in which, after hearing the complainant, the Magistrate was fully competent to dismiss the complaint, and so put an end to all proceedings before him.

In *In re Choolhaie Telee* (7), the Magistrate ordered a prosecution for a false complaint after he had passed an order of dismissal under s. 147; but in that case he took upon himself to direct the institution of a prosecution acting under s. 471, and he was, therefore, under the terms of that section, bound to make such preliminary enquiry as might be necessary before directing a prosecution to be instituted; and the Court there held that he was bound to give the complainant an opportunity of showing that there were no grounds for instituting such a prosecution. That, however, is a very different case from the present one, in which the responsibility of instituting a criminal prosecution was accepted by a private party,

(1) 16 W. R., Cr. Rul., 44.

(2) I. L. R., 5 Calc., 281.

(3) 7 C. L. R., 382.

(4) I. L. R., 6 Calc., 496.

(5) 13 W. R., Cr. Rul., 37.

(6) 2 C. L. R., 389.

(7) *Ibid*, 315.

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the proceedings on the original complaint had regularly terminated, and from what had already taken place before him, the Magistrate was satisfied that the leave asked for should be granted.

I concur in the view of the law expressed by Jackson, J., in *In re Biyogi Bhagut* (1). In that case, however, the order was set aside on the ground that the order of dismissal under s. 147 had not been properly passed, because the complainant had not been examined.

It was certainly open to the complainant in the case now before us, if he thought proper, to apply for an order under s. 298, that a further inquiry into his complaint might be made, notwithstanding the order of dismissal; but he did not think it proper to do so, nor has he at any time, until the lapse of some six weeks, and after, on proceedings taken against him, he has been committed to the Court of Session for making a false complaint, thought proper to take any steps to have his complaint retried, or to have any witnesses examined.

The fact that he has taken no action in the matter seems to me to distinguish the present case from *Syed Nissar Hossein v. Ramgolam Singh* (2). But even if this were not so, I am not disposed to concur in the view laid down by the learned Judges in that case when they say that it was "clearly illegal on the part of the Assistant Magistrate and Magistrate to give sanction under s. 211 of the Penal Code without giving the petitioner an opportunity of adducing evidence to prove that the charge which he made was a true one."

On these grounds I am unable to find anything illegal in the proceedings which have already taken place; and I accordingly concur in discharging this rule.

Rule discharged.

(1) 4 Calc., 134.

(2) 25 W. R., Cr. Rul., 10.