

APPELLATE CRIMINAL.

Before Mr. Justice Morris and Mr. Justice Tottenham.

IN THE MATTER OF THE PETITION OF SOKHINA BIBI.

THE EMPRESS *v.* GRISH CHUNDER NUNDI.*

1881
April 26.

False Charge—Penal Code (Act XLV of 1860), s. 211—Opportunity of substantiating Charge.

Upon a trial for bringing a false charge with intent to injure, it appeared that the original complaint was lodged in the Court of the Extra Assistant Commissioner, and a local enquiry by a competent police officer was directed. The officer reported that the charge was false, and recommended that the prisoner should be prosecuted. The Extra Assistant Commissioner ordered the papers to be sent to the Deputy Commissioner, who ordered the prosecution, and the prisoner was convicted.

Held, that the conviction was bad. The Extra Assistant Commissioner should, on receipt of the report of the police, have communicated its contents to the prisoner and afforded her an opportunity of substantiating her complaint, and should then have decided the case.

BABOO *Joy Gobind Shome* for the petitioner.

THE facts of the case sufficiently appear from the judgment of the Court (MORRIS and TOTTENHAM, JJ.), which was delivered by

MORRIS, J.—It appears to us that there is no legal foundation for the trial of Sokhina Bibi under s. 211 of the Indian Penal Code. Sokhina Bibi lodged a complaint under ss. 354 and 376, coupled with s. 511,³ in the Court of the Extra Assistant Commissioner. After her examination, the Court, under s. 146 of the Code of Criminal Procedure, directed a local enquiry to be made by a competent police officer. This officer, a Sub-Inspector, submitted a report, in which he expressed the opinion that the charge preferred was false, and that the complainant should be prosecuted for making a false complaint:

Criminal Motion, No. 91 of 1881, against the order of T. J. Murray, Esq., Assistant Commissioner of Sylhet, dated the 12th February 1881.

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Thereupon the Extra Assistant Commissioner passed the following order:—"Let the papers be recorded as false, and let the papers be sent to the Deputy Commissioner for proper orders as regards instituting a case against the complainant under ss. 211 and 182." Upon this the Deputy Commissioner, on the 3rd December, passed an order to the effect that in his view no notice ought to have been taken of the complaint owing to the character of the complainant; but as an enquiry had taken place he would allow the petitioner to be prosecuted, if the District Superintendent of Police wished it. The District Superintendent of Police expressed a wish that a prosecution should follow. Upon this the Deputy Commissioner, on the 20th December, ordered the prosecution.

It seems clear to us that there has been no proper adjudication by the Extra Assistant Commissioner of the complaint preferred by Sokhina Bibi. On the receipt of the report of the Sub-Inspector, he should have communicated its contents to the complainant and afforded her an opportunity, if she so desired it, of producing the witnesses named in her complaint, or of giving such other proof in support of her complaint as she might think proper. Having thus put the complainant to the proof and given her the opportunity of substantiating her complaint, the Extra Assistant Commissioner should have proceeded to decide the case. This course he has not adopted at all, and as Sokhina Bibi was prepared to give evidence in support of her complaint, the Deputy Commissioner had, we think, no power to direct a prosecution under s. 211 to be instituted. This is in accordance with the rulings of this Court in *Syed Nissar Hossein v. Ramgolam Singh* (1) and in *Government v. Karimdad* (2). It also strikes us as improper that this prosecution should have been directed by the Deputy Commissioner contrary to his own expressed opinion as to its propriety, and solely in deference to the wishes of the District Superintendent of Police, whose subordinate had been complained against.

We have to observe, with reference to the Assistant Commissioner's explanation as to the examination of the complainant's witnesses, that their examination by the Sub-Inspector of

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

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

Police when enquiring into the original complaint, and their subsequent examination in the present case as witnesses for the defence before himself could not give the prisoner the opportunity of proving that the original complaint was true, to which she was entitled before she could legally be prosecuted for making a false charge.

We, therefore, quash the proceedings, which have resulted in the conviction of Sokhina Bibi under s. 211, and setting aside the sentence of eighteen months' rigorous imprisonment, direct her release.

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APPELLATE CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice McDonell.

SIIOSHI BHOOSHUN PAL AND OTHERS (PLAINTIFFS) v. GURU CHURN
 MOOKHOPADHYA AND OTHERS (DEFENDANTS).*

1881
 March 29.

Limitation—Principal and Agent—Account, Suit for—Zemindar—Beng. Act VIII of 1869, s. 30.

A suit by a zemindar against his land-agent, for payment of sums not accounted for by the latter, must, under s. 30 of Beng. Act VIII of 1869, be brought within three years from the termination of the defendant's agency.

The zemindar should never bring a suit of this kind for an account merely, or for the delivery of accounts or account papers merely; but the suit should be framed for an account and for payment of what, on the taking of the account, may be found due from the defendant to the plaintiff.

IN this case, the first defendant, Guru Churn Mookerjee, had been the agent in charge of the plaintiffs' zemindari, and the second, third, and fourth defendants were his sureties. Guru Churn ceased to be the plaintiffs' agent on the 16th July 1875, and in the year 1877 the plaintiffs sued the present defendants for the purpose of obtaining possession of the zemindari papers and accounts, which possession they obtained on the 2nd of

* Appeal from Appellate Decree, No. 80 of 1880, against the decree of Baboo Nobin Chunder Gangooly, Second Subordinate Judge of Dacca, dated the 1st October 1879, affirming the decree of Baboo Jodu Nath Dass, First Munsif of Moonshigunge, dated the 23rd April 1879.