

Magistrate. The action of the Joint Magistrate in quashing the sanction being therefore *ultra vires* it is unnecessary to consider whether the Court authorized to exercise such a power under sub-section (b) can exercise the same *suo motu* as if it were a Court of revision when no application has been made to it either to give a sanction which has been refused or to revoke a sanction which has been given.

IN THE
MATTER OF
SUBBAMMA.

As regards the question put by the District Magistrate I may observe that the mere fact that a complaint has been made in pursuance of the sanction would be no bar to a Court, competent under sub-section (6) to deal with an application for revoking such sanction, entertaining such application and disposing of it according to law, even if the complaint in pursuance of the sanction has been preferred to itself. The order striking the case off the file being legal for the reasons already stated, it does not require to be revised, but the order of the Joint Magistrate, if any, revoking or quashing the sanction given by the Stationary Magistrate is set aside.

APPELLATE CRIMINAL.

Before Sir Arnold White, Chief Justice.

MALLAPPA REDDI AND ANOTHER (FIRST AND FOURTH ACCUSED),
PETITIONERS,

1903.
March 20.

v.

EMPEROR, COUNTER-PETITIONER.*

Penal Code—Act XLV of 1860, s. 211—Preferring false charge—Statement not reduced to writing by Police officer.

A person was convicted, under section 211 of the Indian Penal Code, of having preferred a false charge. It appeared that the accused had stated to a Police officer that certain of the prosecution witnesses had stolen his goats, and that he had made this statement intending to set the criminal law in motion against those persons. The statement had not been reduced to writing in accordance with the requirements of section 154 of the Code of Criminal Procedure. On its

* Criminal Revision Petition No. 570 of 1902, presented under sections 435 and 439 of the Code of Criminal Procedure praying the High Court to revise the judgment of J. Hewetson, Sessions Judge of Tinnevely, in Criminal Appeal No. 43 of 1902, confirming the finding and sentence of E. H. Wallace, Joint Magistrate of Tuticorin, in Calender Case No. 18 of 1902,

MALLAPPA
REDDI
v.
EMPEROR.

being contended that there was no evidence of a false charge, within the meaning of section 211 :

Held, (1) that the test is—did the person who makes the charge intend to set the criminal law in motion against the person against whom the charge is made ; (2) that (it being clear from the evidence that the accused did so intend) the fact that the statement made by the accused to the Police officer had not been reduced to writing in accordance with section 154 of the Code of Criminal Procedure did not prevent the statement made from being a false charge within the meaning of that section.

CHARGE, against four accused, of preferring a false complaint, under section 211, Indian Penal Code. Accused Nos. 1 and 4 were convicted and sentenced by the Acting Joint Magistrate to eighteen months' rigorous imprisonment. Accused Nos. 2 and 3 were discharged. The Sessions Judge, on appeal, upheld the conviction and sentence. First accused made his complaint to the police on the night of 29th March, whilst fourth accused made his on the morning of 30th March. It was in consequence of this that it was contended that the accused should not have been jointly charged. It appeared also that the statements made by the first accused to the Police officer were not reduced to writing in accordance with the requirements of section 154 of the Code of Criminal Procedure.

The accused filed this criminal revision petition.

Mr. J. G. Smith for petitioner.

JUDGMENT.—Two points have been raised on behalf of the petitioners, first that there was no evidence of a false charge made by the first and fourth accused within the meaning of section 211 of the Penal Code, secondly that the fourth accused ought not to have been tried together with accused Nos. 1 and 3. As regards the first point it has been laid down by this court in a recent case that the test to apply is,—did the person who makes the charge intend to set the criminal law in motion against the person against whom the charge is made. It seems perfectly clear, on the evidence in this case, that the first accused, when he stated to a Police officer that certain of the prosecution witnesses had stolen his goats, intended to set the criminal law in motion against these persons. The fact that the statement made by the accused to the Police officer was not reduced to writing in accordance with the requirements of section 154 of the Criminal Procedure Code, does not, to my mind, prevent the statement made from being a false charge within the meaning of the section. I

can find no authority for placing this narrow construction on the words "falsely charged" and on principle I can find no good reason for adopting such a construction.

MALLAPPA
REDDI
v.
EMPEROR.

As regards the fourth accused, the case is much stronger inasmuch as the charge made by him was reduced into writing and signed by him.

I think there was evidence that accused, Nos. 1 and 4 "falsely charged" the prosecution witnesses within the meaning of section 211 of the Code.

As regards the question of misjoinder it is true the false charge of stealing goats was made by the first accused on one day and by the fourth accused on the following day. I think the offence was the same, viz., a false charge that certain persons stole certain goats and that the first and fourth accused were properly tried together.

As regards the sentence I think a distinction can be drawn between the case of the first and fourth accused. The fourth accused persisted in the charge. The first withdrew it, or at any rate made up his mind not to proceed with it at a very early stage.

In the case of the first accused I reduce the sentence of eighteen months' rigorous imprisonment to nine months' rigorous imprisonment.

As regards the fourth accused the petition is dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Benson and Mr. Justice Bhashyam Ayyangar.

CHEENNA MALLI GOWDA (ACCUSED), APPELLANT,

v.

EMPEROR, RESPONDENT.*

1903.
February 27.

Penal Code—Act XLV of 1860, s. 211—Preferring a false charge—“Charge” made to Village Magistrate—Sustainability.

An accusation of murder made to a Village Magistrate (who, under section 13 of Regulation XI of 1816, has authority to arrest any person whom he suspects of

* Criminal Appeal No. 782 of 1902, presented against the sentence of Verner A. Brodie, Sessions Judge of Coimbatore Division, in Case No. 122 of the Calendar for 1902.