

*Before Mr. Justice Wilson and Mr. Justice Macpherson.*

QUEEN EMPRESS v. ATAR ALI (ACCUSED).<sup>a</sup>

*False charge—Compoundable offence—Discharge of accused charged under s. 211, Indian Penal Code, upon plea of original charge having been compounded—Act XLV of 1860 (Indian Penal Code), ss. 211, 342, 347—Act X of 1882 (Criminal Procedure Code), s. 345.* 1884  
November 3.

The fact that an offence alleged to have been committed has been compounded is no conclusive answer to a charge made against the prosecutor under s. 211 of the Penal Code.

A laid a charge against M for wrongful confinement. The police reported the case as a false one, and A not appearing to prove his complaint the District Magistrate ordered him to be prosecuted under s. 211 of the Penal Code, and made over the case to a Deputy Magistrate. Upon the hearing of such charge, A pleaded that he had compounded the original charge laid by him against M, and that, therefore, the charge against him under s. 211 could not lie. The Deputy Magistrate without hearing any evidence dismissed the case.

*Held*, that the course so taken was illegal, as such plea was no conclusive answer to a charge under s. 211.

THE facts which gave rise to this reference were as follows :—

On the 29th June, one Atar Ali gave information to the police of Charsiddhi that his father was being wrongfully confined by Minut Ali, with a view to extort a kabooliat from him. The police reported the case as false, and as the complainant failed to appear and prove his complaint, the District Magistrate ordered his prosecution under s. 211 of the Penal Code, on the 23rd August, and made over the case for trial to the Deputy Magistrate, who was a first class Magistrate. On the 26th August, the latter fixed the 9th September for hearing, and issued a summons against Atar Ali, under s. 211 of the Penal Code. On the 9th September the case was adjourned till the 10th September. On the 10th September Atar Ali filed a petition, submitting that the charge under s. 211 could not proceed, as he had compounded the original charge under s. 342 of the Penal Code. The Deputy

<sup>a</sup> Criminal Reference No. 159 of 1884, by Baboo A. Borooah, Officiating Magistrate of Noakhali, dated the 6th October 1884, against the order made by H. W. Barber, Esq., Deputy Magistrate of Noakhali, dated the 10th September 1884.

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Magistrate accordingly dismissed the case without passing any orders about the accused. Upon being called upon for an explanation by the District Magistrate, he gave the following as his reasons for the course adopted: "In this case the complainant in the original charge was called on to come and prosecute. He did not do so, on the ground that he had compounded with the accused. Now, s. 345 of the Code of Criminal Procedure does not prevent a case under s. 342 being compounded out of Court. Hence, if a complainant on that charge does not appear to prosecute, a charge under s. 211 would not lie against him, especially on the motion of the police."

The District Magistrate accordingly now referred the case to the High Court, with a covering letter which contained the following:—

"It appears to me the order of the Deputy Magistrate is quite illegal. A charge under s. 211 of the Penal Code cannot be compounded. An accused summoned under s. 211 of the Penal Code cannot be discharged without taking evidence for the prosecution. The complaint before the police amounted to an offence under s. 347 of the Penal Code, and was described by them as such, and such an offence is not compoundable under s. 345 of the Criminal Procedure Code. There is no law that a false charge of wrongful confinement cannot be enquired into, if the complainant fails to prove his complaint.

"Questions again and again come before us—(1) whether the right of compounding allowed by s. 345 of the Criminal Procedure Code can be exercised at any time the complainant chooses, *e.g.*, after the charge is framed, or after the witnesses for the prosecution are examined, or only up to the initial stage of the prosecution, *viz.*, when the accused appears, or is brought before the Magistrate; and (2) whether a prosecution under s. 211, Indian Penal Code, can be frustrated by the alleged exercise of this right, *i.e.*, whether the original complainant, when ordered to prove his complaint preliminary to a trial under s. 211, Indian Penal Code, can get off by simply alleging that he had compounded the case.

"As these two points are connected with this reference. I

solicit the honorable Judges will be pleased to clear our doubt by a decisive ruling."

No one appeared on the reference for either party.

The opinion of the High Court (WILSON and MACPHERSON, JJ.) was delivered by

WILSON, J.—We agree with the District Magistrate in thinking that the order of the Deputy Magistrate is illegal, on the ground that the compounding of the original charge was not a conclusive answer to the charge under s. 211. The order will be set aside, and the case will proceed before such Magistrate as the District Magistrate may direct.

The other point raised by the District Magistrate we think it unnecessary to deal with upon this reference.

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*Before Mr. Justice Prinsep and Mr. Justice O'Kinealy.*  
CHUNDER NATH GHOSE (PETITIONER) v. NUNDOLLOL CHATTERJI (OPPOSITE PARTY).<sup>a</sup> 1884  
November 12.

*Penal Code, ss. 497, 498—Marriage insufficiently proved—Discharge of accused—Retrial ordered—Wife ordered to be examined on retrial.*

In an enquiry into a case of alleged adultery and enticing away a married woman for illicit purposes, the complainant refused to examine his wife as to the marriage; the Deputy Magistrate declined to frame a charge, and discharged the accused.

The Sessions Judge directed a retrial to be held by another Deputy Magistrate, and ordered that the evidence of the wife should be taken as to the marriage.

*Held*, that the Sessions Judge in ordering a retrial had not exercised a proper discretion, he having admitted that the prosecution had failed to prove the marriage, and it not being alleged that any evidence was tendered by the prosecution and not taken by the Deputy Magistrate.

THIS was a motion made to the High Court under Chapter XXXII of the Criminal Procedure Code.

It appeared that one Nundololl Chatterji accused Narain

<sup>a</sup> Criminal Revision No. 377 of 1884, against the order of H. Beveridge, Esq., Officiating Sessions Judge of 24-Pergunnahs, dated 20th of September 1884, setting aside the order of Nawab Abdul Latif, Khan Bahadur, Deputy Magistrate of Sealdah, dated 1st August 1884.