MUNIAPPAN CHETTI v. BALAYAN CHETTI.

Ramdhone Singh(1), *Hildreth* v. *Sayaji Piraji Contractor*(2), and *Shankar Dat Dube* v. *Radha Krishna*(3), which were apparently not cited before the learned Judge, we hold that the appellant is entitled to make this application. The lower Courts have not decided whether the appellant was prevented by sufficient cause from appearing when the suit was heard. It is also alleged that the application is barred by limitation. We therefore set aside the orders passed by the learned Judge and the Courts below and direct the District Munsif to restore the application to his file and dispose of it in accordance with law. Costs will abide the result.

APPELLATE CRIMINAL.

Before Mr. Justice Sankaran-Nair and Mr. Justice Abdur Rahim.

1908
August 3, 11.

CHINNA RAMANA GOWD
v.
EMPEROR.*

Penal Code, Act XLV of 1860, s. 211—False charge must be to one having authority to set criminal law in motion—Criminal Procedure Code, s. 162—Statement made under cannot be the basis of prosecution for false charge.

A statement made under section 162 of the Code of Criminal Procedure in answer to questions put by a police officer making an investigation under section 161 of the Code of Criminal Procedure cannot be made the basis of a prosecution under section 211 of Indian Penal Code.

Information of an alleged dacoity was given to a Village Munsif who sent a report to the police. The police thereupon investigated the case and rejected it as false.

The informant was prosecuted under section 211 of the Indian Penal Code:

Held, that there was no institution of criminal proceedings by the informant, as the Village Munsif had no power to investigate in cases of dacoity.

The informant had made no 'false charge' within the meaning of section 211 as it was not made to one having power to investigate and send up for trial. The subsequent investigation was not the result of the information given but of the report sent by the Village Munsif.

Karim Buksh v. *Queen-Empress*, (I. L. R., 17 Calc., 574), followed.

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(1) I. L. R., 23 Calc., 738. (2) I. L. R., 20 Bom., 380.
(3) I. L. R., 203 All., 195.

* Crimiaal Appeal No. 231 of 1908, presented against the sentence of A. T. Forbes, Esq., Sessions Judge of Bellary Division, in Case No. 26 of the Calender for 1907.

THE facts for the purpose of this report are sufficiently set out in the Judgment.

Mr. *T. Srinivas* and *A. Sangappa* for appellant.

The Ag. public Prosecutor for respondent.

JUDGMENT.—The appellant complained to the village Reddi that, as he was returning to his house, he was robbed by certain persons, whose names were mentioned by him. The Village Reddi embodied this information in his reports to the Sub-Magistrate (exhibit B-1), and to the Inspector (exhibit B), who went to the appellant's village, and took a statement from him (exhibit C), in the handwriting of the karnam, which was read over to the appellant and signed by him. His complaint was on enquiry by the Inspector found to be false, and he was, originally, charged under the second part of section 211, Indian Penal Code, with having instituted criminal proceedings by falsely charging the persons named by him with dacoity before the Police Inspector (exhibit C).

The Sessions Judge, who first tried the case, held that (exhibit C) was a statement taken under section 162, Criminal Procedure Code, and that the appellant could not be prosecuted for an offence under section 211, Indian Penal Code, for answering qustions put to him by a police officer making an investigation under section 161 of the Criminal Procedure Code and accordingly acquitted the appellant. In his judgment, referring to a suggestion made before him by the Public Prosecutor that the complaint to the Village Magistrate might amount to an offence under section 211, Indian Penal Code, he held, following the case *In the matter of the petition of Jamoona*(1) that the false charge must be made to a Court or to an officer who has powers to investigate and send up for trial.

On appeal against this acquittal the learned Judges of this Court who heard the appeal held that "the case is on all fours with the case in *Emperor* v. *Jonnalagadda Venkatrayudu*(2), which should have been follwed by the acting Sessions Judge."

The acquittal was set aside, and the Sessions Judge has now convicted the appellant of an offence under the second part of section 211, Indian Penal Code, and the appellant has appealed from that conviction. We are satisfied that exhibit (C) cannot

(1) I. L. R., 6 Calc., 621. (2) I. L. R., 28 Mad., 567.

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be treated as a complaint or charge. It is a statement made under section 162, Criminal Procedure Code. The statements in (C) are answers to questions asked by the Police Inspector, often as if in cross-examination. We agree with the acting Session Judge that exhibit (C) cannot be made the basis of a prosecution for an offence under section 211, Indial Penal Code.

The next question is whether the statement to the Village Magistrate can be treated as a false charge or as an instution of criminal proceedings.

In the judgment setting aside the acquittal, it is stated that the case is on all fours with the case of *Emperor* v. *Jonnalagadda Venkatrayudu*(1).

This is clearly an error. In that case the question for consideration was whether the oral information given was "information" under section 182, Indian Penal Code.

That case had no reference, whatever, to section 211, Indian Penal Code, and we have therefore allowed the appellant's pleader to argue whether the information given to the Village Magistrate was a 'charge' or the institution of any criminal proceeding under section 211, Indian Penal Code. In *Karim Buksh* v. *Queen-Empress*(2) it was decided by the Full Bench of the Calcutta High Court that a false charge to the police of a cognizable offence is the institution of criminal proceedings under section 211, Indian Penal Code, on the ground that from the time a person makes the charge the control of the investigation or enquiry passes out of his hands into the hands of the constituted authorities: and that for the same reason a charge to the police of a non-cognizable offence can hardly be called to the investigation of criminal proceedings. See also *Queen-Empress* v. *Nanjunda Rao*(3) and the *Queen-Empress* v. *Subbanna Goundan*(4).

The Village Reddi, like the police officer to whom information of a non-cognisable offence is given, has no power to make any investigation in a case of dacoity, and for the reason given in *Karim Buksh* v. *Queen-Empress*(2), therefore, the appellant cannot be held to have instituted any criminal proceedings.

Has he then made any false charge? The only direct authority on the point brought to our notice is the case. *In the matter*

(1) I. L. R., 28 Mad., 567.
(2) I. L. R., 17 Calc., 574.
(3) I. L. R., 20 Mad., 79.
(4) 1 M. H. C., 30.

of the petition of Jamoona(1). In that case a woman charged a non-commissioned officer with the offence of rape before the Station Staff Officer who had neither magisterial nor police powers.

The High Court therefore held that section 211, Indian Penal Code, will not apply on the ground "that the false charge must be made to a Court or to an officer who had powers to investigate and send up for trial."

It appears to us that this decision is right. Though the section does not state that the charge must be made before any officer entitled to investigate, that appears to be the reasonable conclusion. It is obvious that accusing a person of the commission of an offence, or giving information against him to a person, other than an official, cannot be treated as a 'charge' under that section.

An accusation before an official who has nothing to do with the administration of justice seems to stand on the same footing. In our opinion, the test is, was the appellant setting the criminal law in motion against the persons against whom he gave the information? Under the Code he may set the criminal law in motion by preferring a charge to the police, of a cognisable offence (section 154), or by preferring a complaint to the Magistrate (section 191).

It was not the appellant, but the report of the Village Magistrate which set the criminal law in motion, and we are therefore of opinion that the appellant cannot be said to have made a false charge under section 211, Indian Penal Code.

On this ground we set aside the conviction, allow the appeal, acquit the accused and direct him to be set at liberty.

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(1) I. L. R., 6 Calc., 620 at p. 621.