

APPELLATE CRIMINAL.

Before Sir Arnold White, Chief Justice, and Mr. Justice
Subrahmanya Ayyar.

RAYAN KUTTI (PRISONER), APPELLANT,

v.

EMPEROR, RESPONDENT.*

1903.
February 10,
11.

Penal Code—Act XLV of 1860, ss. 211, 182—Instituting false complaint—Giving false information—Criminal Procedure Code—Act V of 1898, s. 531—Proceedings in wrong place.

The word “charges” as it is used in section 211 of the Indian Penal Code, means something different from “gives information.” The words “false charge,” as there used, must be construed with reference to the words which speak of the institution of proceedings :

Seemle, the true test is;—Does the person who makes the statement which is alleged to constitute the charge, do so with the intention and object of setting the criminal law in motion against the person against whom the statement is directed? Such object and intention may be inferred from the language of the statement and the circumstances in which it is made.

A petition was presented with the object (as the High Court held from its terms) of bringing to the knowledge of the authorities certain matters regarding which the petitioner had received information, in order that there might not be a repetition of an alleged tutoring of witnesses, and not with the object that the authorities should institute criminal proceedings :

Held, that the petition did not amount to a “charge” within the meaning of section 211 of the Indian Penal Code.

To constitute an offence under section 182, it must be shown that the person giving the information knew or believed it to be false, or that the circumstances in which the information was given were such that the only reasonable inference is that the person giving the information knew or believed it to be false. The fact that an information is shown to be false does not cast upon the party who is charged with an offence under the section the burden of showing that, when he made it, he believed it to be true. The prosecution must make out that the only reasonable inference was that he must have known or believed it to be false.

Section 531 of the Code of Criminal Procedure applies to a case where a Magistrate who has authority to commit a case for trial, does so, but has not territorial jurisdiction in the place where the offence to be tried is alleged to have been committed.

CHARGE of preferring a false complaint under section 211 of the Indian Penal Code. The accused was charged with preferring a

* Criminal Appeal No. 731 of 1902 presented against the sentence of N. S. Brodie, Sessions Judge of South Malabar, in Calendar Case No. 77 of 1902.

false complaint of fabricating false evidence against the Station-^{RAYAN KUTTI}
 House officer of Malappuram. The alleged complaint was con-
 tained in a petition which was presented to the Sub-Magistrate,
 Manjeri, in the following terms :—“ The petition presented by Poo-
 katan Rayan Kutti, the elder brother of Pookatan Ali, the accused
 in the above case, on reasons shown below :—In the above case,
 the said Ali and others are arrested and they are in the sub-jail.
 At the time when the said Ali and Koya were arrested, one of the
 complainants had gone to Madras. Excepting him Ali and Koya
 were shown to the rest of them at the Malappuram Station House
 and they were also tutored. The man who had gone to Madras
 returned lately, and, in order to show to him and tutor him, he was
 also brought by the Malappuram head constable to the Manjeri
 sub-jail on Sunday, the day before yesterday, the 13th of this
 month; and he was also shown and tutored. The Assistant Collec-
 tor of Malappuram and the Assistant Superintendent have seen
 him brought to Manjeri to show him the prisoners as stated in
 paragraph 3. It is a matter of great grievance and also contrary
 to law, to fabricate evidence by bringing persons to whom the said
 Ali and Koya were unknown, and showing them the said Ali
 and Koya and tutoring them and making them say that they
 know the said persons by sight. On making enquiries to the
 persons who are in the sub-jail and others, it will be known that
 the above allegations are true. Prays, therefore, that the Court
 may be pleased to make enquiries, to find out the truth of the
 above allegations and to take the necessary steps in this matter.
 (Signed) Rayan Kutti, 15th April 1902.”

The Police Inspector filed a petition before the Special Assistant
 Magistrate of Malabar, asking that the accused might be sent
 under section 476 of the Criminal Procedure Code for trial to the
 nearest First-class Magistrate. The Special Assistant Magistrate
 considered there was a strong *prima facie* case of preferring a false
 complaint, and sent the accused in custody to the Head Assistant
 Magistrate, Palghat Division, for trial. The last-mentioned
 Magistrate committed the accused to the Sessions at South Malabar
 on a charge of having instituted a false complaint under section 211
 of the Penal Code. The assessors were of opinion that the charge
 of preferring a false complaint under section 211, clause (2), had
 been made out, and that opinion was concurred in by the District
 Judge who said :—“ The accused does not venture to maintain that

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he saw what happened, although that is the only inference which can be drawn from the terms of his complaint. He now pleads only that he heard this from some persons whose names he could not mention in the lower Court and who have now dwindled into one man." He convicted and sentenced the accused. The accused preferred this appeal on the grounds, among others, that the Judge had not found that the statements in the petition were false to the knowledge of the accused; that the petition was not a complaint, and that no offence had been made out under section 211 (2). The ground was also relied on that the order passed by the Special Assistant Magistrate of Malabar sending the accused for trial to the Head Assistant Magistrate, Palghat Division, was invalid, and that in consequence the committal by the last-named Magistrate was also invalid.

The accused preferred this appeal.

Dr. *Swaminathan*, for appellant, argued that the conviction ought to be quashed as the commitment to the Sessions was invalid. The Head Assistant Magistrate of Palghat, who committed the case, would ordinarily have had jurisdiction under section 177, Criminal Procedure Code, only if the alleged offence had been committed within the limits of his local jurisdiction. Admittedly the alleged offence took place outside his local jurisdiction, and the proceeding under section 476 of the Special Assistant Magistrate, which, if valid, would have conferred jurisdiction on the committing Magistrate, were invalid, as the matter did not come before the Special Assistant Magistrate in the course of a judicial proceeding. As regards the merits of the case, he contended that exhibit A did not amount to preferring a charge or instituting criminal proceedings within the meaning of section 211, Indian Penal Code, and cited *Raghavendra v. Káshinath Bhat*(1). Finally he contended that the conviction could not be sustained, even under section 182, as there was absolutely nothing to indicate that the accused knew the contents of A to be false, or that the petition was not put in *bonâ fide* and in furtherance of justice.

The Public Prosecutor, in support of the conviction, contended that the accused was properly convicted under section 211 for falsely charging a person of having committed an offence knowing that there was no just or lawful ground for such charge.

JUDGMENT.—Objection has been taken to the legality of the conviction in this case, on the ground that the order of commitment was invalid and that consequently the Sessions Judge has no jurisdiction to try the case.

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A First-class Magistrate made an order under section 476 of the Code of Criminal Procedure sending the case for enquiry to the nearest First-class Magistrate, who committed the accused to Sessions. The Magistrate to whom the case was sent had not territorial jurisdiction over the place in which the offence was alleged to have been committed. This being so, it was argued that it was not competent for him to take cognizance of it and that the order of commitment made by him was invalid. Section 531 of the Criminal Procedure Code provides that no order of a Criminal Court shall be set aside merely on the ground that the proceedings in which the order was made took place in a wrong local area unless the error in fact occasioned a failure of justice. Section 531 applies to a case where the Magistrate has authority to commit, but has not territorial jurisdiction in the place where the offence is alleged to have been committed. *Queen-Empress v. Abbi Reddi*(1), *Queen-Empress v. James Ingle*(2) and *Queen-Empress v. Fazl Azim*(3):

We are satisfied in the present case that no failure of justice has, in fact, been occasioned by the order of commitment having been made by a Magistrate who had not territorial jurisdiction in the place where the offence is alleged to have been committed.

The objection is overruled.

As regards the merits, the Public Prosecutor concedes that a conviction on the charge actually preferred, viz., the institution of criminal proceedings knowing that there was no just or lawful ground for such charge cannot be supported. He has contended, however, that the accused was properly convicted under section 211 for falsely charging a person of having committed an offence knowing that there was no just or lawful ground for such charge.

Now it is obvious that the word "charges," as used in the section, means something different from "gives information." We think, the words "falsely charges" must be construed with reference to the words which speak of the institution of proceedings. The true test seems to be, does the person who makes the statement

(1) I.L.R., 17 Mad., 402.

(2) I.L.R., 16 Bom., 200.

(3) I.L.R., 17 All., 36.

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which is alleged to constitute the "charge" do so with the intention and object of setting the criminal law in motion against the person against whom the statement is directed. Such object and intention may be inferred from the language of the statement and the circumstances in which it is made. Applying this test to the present case we are clearly of opinion that the petition which is said to constitute the "charge" is not a charge within the meaning of section 211. There is no statement in the petition that the accused had seen the "tutoring" of the witness to which he refers. In fact, in his subsequent deposition, he stated expressly that he was not in a position to prove the statements which he had made.

The language of the petition makes it clear that the intention of the accused was to bring to the knowledge of the authorities certain matters as to which he had received information, in order that there might not be a repetition of the alleged "tutoring," and that it was not his object or intention that the authorities should institute criminal proceedings against the constable in question. We are of opinion that the petition does not amount to a charge within the meaning of section 211, and that the conviction under that section cannot be upheld. There remains the question, whether we can, in exercise of the powers conferred by section 237 of the Code of Criminal Procedure, convict the accused of an offence under section 152 of the Indian Penal Code. To constitute an offence under that section it must be shown that the person giving the information knew or believed it to be false or that the circumstances in which the information was given were such that the only reasonable inference is that the person giving the information knew or believed it to be false. It cannot be said that this has been shown in the present case. The fact that the information is shown to be false does not cast upon the party who is charged with an offence under this section, the burden of showing that when he made it he believed it to be true. The prosecution must make out that the circumstances were such that the only reasonable inference was that he must have known or believed it to be false. The evidence in the present case does not establish this, and there are circumstances in the case which make us think it not unlikely that at the time the information was given the accused believed the information to be true.

The conviction and sentence must be set aside and the accused set at liberty. The fine, if paid, must be refunded.