APPELLATE CRIMINAL.

Before Sir Owen Beasley, Kt., Chief Justice, and Mr. Justice Sundaram Chetti.

1931, March 23.

K. DHOLLIAH (ACCUSED), PETITIONER,

v.

KING-EMPEROR (COMPLAINANT), RESPONDENT.*

Code of Criminal Procedure (Act V of 1898), sec. 195 (1) (b)—Person gave information to police alleging commission of offence—After investigation police reported to Sub-Magistrate case false—Same complaint pressed before Sub-Magistrate—Accused discharged under sec. 253 (2) of the Code—Police filed complaint before Subdivisional Magistrate for giving false information to police—Conviction under sec. 182, Indian Penal Code (Act XLV of 1860)—Legality of—Offence committed whether not one under sec. 211, Indian Penal Code—Complaint in writing under sec. 195 (1) (b) of the Code of Criminal Procedure—Necessity for.

A person gave information to the police that certain persons had broken the seal and lock of a temple and entered it. After some investigation the police reported to the Stationary Sub-Magistrate that the case was false. Thereupon the said person pressed the same complaint before the Stationary Sub-Magistrate requesting the Court to make a judicial investigation of the charge. Subsequently the Magistrate discharged the accused persons in that case, under section 252 (2) of the Code of Criminal Procedure (Act V of 1898), finding the charge against them to be groundless. The police filed a complaint against the said person for giving false information to the police before the Subdivisional Magistrate who convicted him under section 182 of the Indian Penal Code (Act XLV of 1860).

Held, in revision, by the High Court, that, as the complaint disclosed clearly an offence under section 211 of the

* Criminal Revision Case No. 715 of 1930.

Indian Penal Code alleged to have been committed in or in relation to a proceeding in Court, the Subdivisional Magistrate could not take cognizance of the case without a complaint in writing by the Sub-Magistrate as required by section 195 (1) (*b*) of the Code of Criminal Procedure and that the conviction was illegal and should be set aside.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the Subdivisional Magistrate of Coonoor in Calendar Case No. 52 of 1930.

K. S. Jagarama Ayyar and *G. Gopalaswami* for petitioner.

K. N. Ganpati for *Public Prosecutor* (*L. H. Bewes*) for the Crown.

JUDGMENT.

SUNDARAM CHETTI J.—This is a criminal revision petition filed by the accused against the conviction and sentence passed by the Subdivisional Magistrate, Coonoor, under section 182, Indian Penal Code, imposing on him a fine of Rs. 25. The Subdivisional Magistrate took cognizance of this case on a complaint filed by the Sub-Inspector of Police against the accused. In that complaint it is alleged that the accused gave false information to the Sub-Inspector of Police, Wellington, that three persons, namely, P.Ws. 3, 4 and 5, had broken the seal and lock of a temple in Karteri and entered into the temple. After some investigation, the police reported to the Stationary Sub-Magistrate that the case was false. Thereupon, the present accused pressed the same complaint before the Stationary Sub-Magistrate, Coonoor, requesting the Court to make a judicial investigation of the charge. Subsequently the Magistrate discharged the accused persons in that case under section 253 (2), Code of Criminal Procedure,

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finding the charge against them to be groundless. Embodying these facts in the present complaint and alleging that, by reason of these circumstances, the accused has committed an offence under section 211, Indian Penal Code, the present prosecution was launched by the Sub-Inspector of Police against the accused.

A preliminary objection was taken on behalf of the defence before the Magistrate that, in the face of the facts alleged in the complaint, the offence is one under section 211, Indian Penal Code, committed in or in relation to a proceeding in Court and, therefore, the Magistrate could not take cognizance of the offence, in the absence of a complaint in writing of the Stationary Sub-Magistrate, Coonoor. Overruling this objection, the learned Magistrate considered that the case should be tried under section 182, Indian Penal Code, and accordingly tried the case which resulted in the conviction of the accused.

It is argued before us that the facts as set forth in the complaint clearly bring the offence under section 211, Indian Penal Code, alleged to have been committed in or in relation to a proceeding in a Court, and, that being so, the learned Subdivisional Magistrate had no jurisdiction to take cognizance of this case in the absence of a complaint in writing of the Sub-Magistrate of Coonoor as required by section 195 (1) (*b*) of the Code of Criminal Procedure. In the first place, it must be observed that, if regard be had to the facts disclosed in the present complaint, the charge against the accused is not simply for giving false information to the police (section 182, Indian Penal Code), or making a false charge against some persons before the police (section 211, Indian Penal Code), but it is also distinctly stated that the false information to the police was followed by a complaint to the Stationary Sub-Magistrate who took

cognizance of the case and eventually discharged the accused holding the charge against them to be groundless. When a complaint sets forth certain facts disclosing a minor offence and also a graver offence, the prosecution should ordinarily be for the graver offence. If in entertaining such a complaint there is a legal bar to taking cognizance of the graver offence by reason of the want of a complaint by the Magistrate, the legal consequence should not be allowed to be evaded by confining the case to the minor offence alone and disposing it of accordingly. A similar question was considered by CURGENVEN J. in a recent case, *Perianna Muthirian* v. *Venga Aiyar*(1), and, after a review of the case-law on the point, that learned Judge has held that, if a graver offence is disclosed from the facts stated in a complaint, the condition fixed in section 195 (1) (*b*) of the Criminal Procedure Code for taking cognizance of such a case cannot be evaded by electing to name the offence under another section which is more general and less grave. The course which the learned Subdivisional Magistrate seems to have adopted in the present case is open to the objection pointed out by CURGENVEN J. in the above case.

A number of decisions have been brought to our notice, and there is doubtless a conflict of opinion ; but, in the present case, the question on which there is a conflict of judicial opinion does not, in our opinion, necessarily arise for determination. If, in the present case, the complaint made by the Sub-Inspector of Police against the accused was confined solely to the false information alleged to have been given to the police, or the false charge made by him before the Police, then, a question will arise whether by reason of the fact that

(1) (1928) 56 M.L.J. 208.

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this information or charge made to the police was followed up by a complaint to the Magistrate, the Sub-divisional Magistrate would be precluded from taking cognizance of this case without a written complaint from the Sub-Magistrate of Coonoor. The view taken by the Calcutta High Court is that, in such a case, even in respect of the false charge made to the police, it should be taken to be an offence under section 211 committed in relation to a proceeding in Court, and, therefore, the complaint of the Court itself would be necessary for taking cognizance of such a charge; see *Tayebulla* v. *Emperor* (1), *Brown* v. *Ananda Lal Mullick*(2), and *Sheikh Samir* v. *Sajidar Rahman*(3). In the case decided by a Bench of the Patna High Court in *Shaikh Muhammad Yassin* v. *King-Emperor*(4) the view taken by the Calcutta High Court has been followed. The view taken in that decision goes a step further, because it is stated that, even in respect of the false charge made to the police which alone is the subject-matter of the complaint, the complaint of the Court itself would be necessary for taking cognizance of the case, if it is shown that, after making a false charge, a complaint was also preferred to a Magistrate for judicial investigation, even though that Magistrate had not investigated the complaint. In a later decision of that High Court, *Daroga Gope* v. *King-Emperor*(5), the principle of the decision in *Shaikh Muhammad Yassin* v. *King-Emperor*(4) was upheld, if the prosecution be for an offence under section 211, Indian Penal Code, in respect of a false charge made to the police, but it is observed therein that the case can be proceeded with even without a complaint in writing by the Magistrate if the offence is treated to be one falling

(1) (1916) I.L.R. 43 Calc. 1152. (2) (1916) I.L.R. 44 Calc. 650.
(3) (1926) I.L.R. 53 Calc. 824. (4) (1924) I.L.R. 4 Pat. 323.
(5) (1925) I.L.R. 5 Pat. 33.

under section 182, Indian Penal Code, whereas a contrary view was taken in the case of *Rambrose* v. *King-Emperor*(1) decided by a single Judge who says that a prosecution under section 182 (a minor offence) should not be permitted and should be abandoned when the facts amount to a graver offence under section 211, Indian Penal Code. The view taken by that learned Judge is that the conviction for the minor offence when a charge under the graver offence could not be taken cognizance of without the complaint of the Magistrate would not be legal. But this view has been dissented from in a subsequent decision of the Bench of that High Court in the case of *Ma Paw* v. *King-Emperor*(2). On page 505 the learned Judges have however observed as follows:—

"In the ordinary way if a prosecution takes place, it should be for the more serious of the two offences committed. This may, no doubt, be a good ground for quashing proceedings under the minor section in their early stages; but when there has been no prosecution for the more serious offence and a person has been prosecuted and convicted for the minor offence and the whole case is complete, we see no reason for holding that the conviction is illegal and must be set aside."

It is noteworthy that the facts in that case are clearly distinguishable from the facts of the present case. The prosecution in that case was solely in respect of the alleged false information made to the police which would bring the charge under section 182, Indian Penal Code, and no reference was made in that complaint to any false charge made before a Magistrate subsequent to the giving of information to the police. In fact, the complaint subsequently made to the Magistrate was not even disposed of by that time. It was, therefore, held that the offence disclosed in the complaint put in by the police was a distinct offence under section 182, Indian

(1) (1928) I.L.R. 6 Rang. 578. (2) (1930) I.L.R. 8 Rang. 499.

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Penal Code, which can be tried on the complaint of the police officer himself. The view taken in *Emperor* v. *Ping Datt*(1) and some other decisions of that High Court is in conformity with that expressed by the Rangoon High Court in *Ma Paw* v. *King-Emperor*(2). The present case relates to a complaint which disclosed not only a false charge made to the police but also a false charge subsequently made to the Magistrate on the strength of the same facts. Such a case could not be taken cognizance of without a written complaint by the Magistrate as required by section 195 (1) (*b*) of the Code of Criminal Procedure. The view expressed in the Calcutta decisions has been followed by a learned Judge of this Court in the case of *Swaminatha Aiyar* v. *Guruswami Mudaliar*(3). We are not now dealing with a complaint by a police officer in which the charge is confined only to an offence under section 182, Indian Penal Code. In such a case alone, it may be doubted, in view of the conflict of judicial opinion pointed out above, whether a complaint by the Magistrate also is necessary ; but much of the ground for conflict has been steered clear, inasmuch as the present complaint disclosed clearly an offence under section 211 alleged to have been committed in or in relation to a proceeding in Court.

That being so, the want of a complaint in writing by the Magistrate is certainly a bar to taking cognizance of this case by the Subdivisional Magistrate. In this view, the conviction and sentence passed by him should be quashed as illegal, and the fine, if levied, will be refunded to the accused.

BEASLEY C.J.—I agree.

B.C.S.

(1) (1928) I.L.R. 51 All. 382. (2) (1930) I.L.R. 8 Rang. 499.
(3) (1927) 53 M.L.J. 457.