wrong. The decree of the lower Courts is reversed and the suit remanded to the District Munsif for trial on the merits of the other issues recorded. The respondents must pay the costs of the appellant in this and in the lower appellate Court. The costs hitherto incurred in the Munsif's Court will be provided for in the revised decree. The appellant will have refund of the fee paid on the memorandum of appeal.

CURGENVEN J.—I agree.

A.S.V.

APPELLATE CRIMINAL—FULL BENCH.

Before Mr. Justice Wallace, Mr. Justice Waller and Mr. Justice Krishnan Pandalai.

THE REGISTRAR, HIGH COURT, MADRAS, PETITIONER,

v.

KODANGI *alias* ARUNACHALAM SERVAI, RESPONDENT.*

1930, October 20.

Code of Criminal Procedure (Act V of 1898), ss. 476 and 195 (1) (b)—Meaning of the words "in relation to the proceeding"—Complaint to police against accused and others not charged—Court has no jurisdiction to take action under sec. 476 against complainant, under sec. 211, Indian Penal Code, in respect of persons not charged.

When a charge is made by a complainant to the police against more than one individual, and the police, while charging before the Court one or more of such individuals with the offence complained of, do not charge them all, the Court has no jurisdiction to take action, under section 476 of the Code of Criminal Procedure, against the complainant, under section 211, Indian Penal Code, in respect of those not so charged.

---

* Criminal Miscellaneous Petition No. 693 of 1930.

THE REGISTRAR, HIGH COURT, MADRAS v. KODANGI.

Where a witness for the prosecution sends a telegram to the District Superintendent of Police that the accused, with other persons not charged, stabbed the deceased, the mere fact that the telegram is exhibited and filed in the case does not make the contents of it a matter "in relation to the proceeding" in the Court so as to give the Court jurisdiction to take action under section 476.

PETITION praying that in the circumstances stated in the judgment in Criminal Appeal No. 178 of 1930, on the file of the High Court, the High Court will be pleased to direct that a complaint under section 211 of the Indian Penal Code be preferred against Kodangi *alias* Arunachalam Servai, Prosecution Witness No. 20 in Sessions Case No. 7 of 1930, on the file of the Court of Session, Madura Division.

The petition coming on for hearing the Court (BEASLEY C.J. and PAKENHAM WALSH J.) made the following

ORDER OF REFERENCE TO A FULL BENCH:—

On the 19th October 1929 at about 6 p.m. or a little earlier a man named Tirumeni Servai was stabbed in the neck at Appantirupathi and died almost immediately. One Malayalam *alias* Veeranan Ambalam was tried for that offence in the Sessions Court of Madura, convicted of it and sentenced to transportation for life. It was clearly established that Tirumeni Servai was stabbed in a mantapam by the side of the road and this fact is of considerable importance. Shortly after 9 p.m. on the same day, Kodangi *alias* Arunachalam Servai, a nephew of the deceased, sent a telegram to the District Superintendent of Police at Madura North. It is worded as follows:

"Self and Tirumeni Servai went to Alagarkoil Road, Alagapuri. Our enemies, Madar Moideen, elder brother's son of Ottaikundi Mohamed Gani, Mohamed Gani's sister's son, Raja Rowther, Anupanadhi Alagumalai Pillai, Vellayakundram Manthayan's son Malayalam, these four stabbed Tirumeni Servai. Tirumeni Servai lying unconscious on Appantirupathi road. Pray take immediate steps. Arunachalam Servai, Kilavadam-poki Street."

The fourth name mentioned in the telegram is that of the convicted man. This telegram was later on for obvious reasons treated as a false document and no charge was brought against the other three persons mentioned in the telegram. The only statement in the telegram that was true was that Tirumeni Servai had been stabbed by Malayalam. The evidence shows that the murder could not have taken place where the respondent in this petition stated in his telegram that it had. It clearly took place in the mantapam. The evidence also shows that the respondent who was Prosecution Witness 20 in the Sessions Case was not present at the stabbing. It also clearly shows that the other three persons mentioned in the telegram did not stab the deceased. In the Committing Magistrate's Court, the respondent admitted that the contents of the telegram were not true. This admission he repeated in the Sessions Court where the telegram was admitted in evidence. He explained that he got from Prosecution Witness 22 a message sent by means of a bus driver who was not a witness in the case giving a brief account of the occurrence and said that he thought that other enemies of the deceased besides Malayalam must have been involved and that therefore he despatched that telegram. He admitted that he was in Madura at the time of the occurrence and therefore did not see anything of the stabbing. The police from the beginning treated the respondent's statement as deliberately false. The discovery of blood on the floor in the north-east corner of the mantapam and a lot of blood on the platform together with the evidence of some of the witnesses conclusively proved that the respondent's account was false. The convicted man filed Criminal Appeal No. 178 of 1930 against his conviction and the appeal came before the Criminal Bench as at present constituted. The appeal was dismissed but we took a very serious view of the conduct of the respondent and in our judgment made the following order:

"As the evidence in this case, in our opinion, clearly discloses conduct which renders Prosecution Witness 20 Kodangi *alias* Arunachalam Servai liable to criminal proceedings we direct that notice be served upon him calling upon him to show cause before us why a complaint charging him with an offence under section 211 of the Indian Penal Code should not be made by us under section 476 of the Code of Criminal Procedure. Notice returnable on 28th August 1930."

THE REGISTRAR, HIGH COURT, MADRAS v. KODANGI.

On 4th September 1930 Mr. Jayarama Ayyar on behalf of the respondent appeared and contended that the Criminal Bench hearing the appeal was not competent to make any such order under section 476 of the Code of Criminal Procedure. His contention was that the offence alleged to have been committed by the respondent (namely, that with intent to cause injury to the persons falsely accused in the telegram and knowing that there was no just or lawful ground for any such accusation, he falsely charged them with having committed the offence of murder) was not committed in or in relation to proceedings in the Sessions Court and subsequently in the Appellate Court because the only person charged in the Sessions Court was Malayalam alias Veeranan Ambalam. He contends therefore that unless it is shown that the person or persons falsely accused are proceeded against in a Court and shown to have been falsely accused, section 476 of the Code of Criminal Procedure has no application. Section 211, Indian Penal Code, is one of the sections set out in section 195 (1) (*b*) of the Code of Criminal Procedure. The latter section says that no Court shall take cognizance of any offence punishable under any of the sections enumerated there—section 211 is one of them—and proceeds " when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate." Therefore his argument was that as the alleged offence was not committed in or in relation to any proceeding in any Court, the High Court could not take cognizance of that offence and that the complaint in writing of such Court is only necessary when the offence has been committed in or in relation to any proceeding in a Court. In support of his argument several cases were referred to by him. The first of these was *Muhammada* v. *The Crown*(1). In that case the petitioner made a report at the Police Station, Ferozepore, that he was in the Ferozepore hospital on a certain night attending on his sister who was an in-door patient there when one Nihal Singh came into the compound with a takwa in his hand intending to murder his sister, that Nihal Singh was accompanied by Raushan Beg and Ahmad Din, who were the expectant heirs of his sister and who had instigated him to commit the crime and that he was able

(1) (1928) I.L.R. 9 Lah. 408.

to catch Nihal Singh, his companions having run away. The police after enquiry found that the story he had given was false. They took no action against Raushan Beg or Ahmad Din but charged Nihal Singh under the Arms Act for being in possession of the takwa. He was, however, acquitted. Raushan Beg then lodged a complaint under section 211, Indian Penal Code, against Muhammada for having made a false charge against him. Muhammada was tried by the First-class Magistrate, Ferozepore, and found guilty under that section and sentenced to undergo rigorous imprisonment for four months and to pay a fine of Rs. 100. His appeal to the Sessions Court being unsuccessful, he preferred a revision to the High Court and the case came up before Sir SHADI LAL C.J. and AGA HAIDAR J. on reference by a single Judge. The Division Bench held that clause (1) (*b*) of section 195 of the Code of Criminal Procedure did not apply to the prosecution of the accused by Raushan Beg under section 211, Indian Penal Code, the offence alleged thereunder not having been committed 'in or in relation to any proceedings in any Court' within the meaning of the clause. On page 417 it is stated, "Raushan Beg was never charged in any Court, nor was he ever put upon his trial before any magistrate, nor were any proceedings taken against him before the Court in which Nihal Singh was involved. This being so, it cannot be said that the offence under section 211 of the Indian Penal Code with which Muhammada, the applicant, had been charged, was an offence which was committed in or in relation to any proceeding in Court. This being our view it was not necessary that the present prosecution should have been initiated on the complaint in writing of the magistrate who tried and disposed of Nihal Singh's case. Under these circumstances the objection as to the maintainability of the present complaint fails." In the course of the judgment reference was also made to some other cases and in particular to *Emperor* v. *Hardwar Pal*(1) where a contrary view, to that taken by the Division Bench of the Lahore High Court, was taken. There Hardwar Pal made a report against several persons including one Sher Bahadur Singh at a police station charging them with rioting and voluntarily causing hurt. The police made enquiry and sent up several persons for trial but not Sher Bahadur Singh. Some of these were convicted by the magistrate but acquitted by the Sessions Judge. Thereupon Sher

(1) (1912) I.L.R. 34 All. 522.

THE REGISTRAR, HIGH COURT, MADRAS v. KODANGI.

Bahadur Singh made a complaint to the magistrate charging Hardwar Pal with having made a false report in respect of himself to the police. The magistrate took cognizance of the complaint but it was held that the magistrate had no power to take cognizance of the complaint by reason of the absence of sanction. Considerable doubt as to the correctness of this decision was thrown by two learned Judges of the same High Court in *Emperor* v. *Kashi Ram*(1). In that case it was held that there was no necessity for sanction for the prosecution of the person charged and it was held that if the complainant confines himself to reporting what he knows of the facts, stating his suspicions, and leaving the matter to be further investigated by the police or leaving the police to take such course as they think right in the performance of their duty, he may be making a report but he is not making a charge. But if he takes the further step, without waiting for any further investigation, of definitely alleging his belief in the guilt of a specified person and his desire that the specified person be proceeded against in Court, that act of his, whether verbal or written, if made to an officer of the law authorized to initiate proceedings based upon the complainant's statement whether amounting to an expression of the complainant's belief in the guilt of the specified person or his desire that Court proceedings be taken against him amounts to making a charge. The Court held that under section 195 (1) (*b*) of the Code of Criminal Procedure a complaint of the Court was not necessary because the charge was not in a Court. In *Tayebulla* v. *Emperor*(2) a false charge was made by a person to the police and it was held that no sanction was necessary under section 195 (1) (*b*) of the Code of Criminal Procedure to prosecute an informant under section 211 of the Indian Penal Code but that sanction would be required if he subsequently preferred a complaint to the magistrate praying for judicial investigation, and it was held that having laid information before the police and not having subsequently applied to the magistrate for an investigation or impugned the correctness of the police report and prayed for trial, he had not made a "complaint" within the meaning of section 4 (*h*) of the Code. Another case referred to by Mr. Jayarama Ayyar was *Brown* v. *Ananda Lal Mullick*(3). There it was held that

(1) (1924) I.L.R. 46 All. 906. (2) (1916) I.L.R. 43 Calc. 1152.
(3) (1916) I.L.R. 44 Calc. 650.

where an information to the police is followed by a complaint to the Court based on the same allegations and the same charge and such complaint has been investigated by the Court, the sanction or complaint of the Court itself is necessary even for a prosecution of the informant under section 211, Indian Penal Code, in respect of the false charge made to the police. SANDERSON C.J. in the course of his judgment referred to *Emperor* v. *Hardwar Pal*(1) but did not express any opinion as to the correctness of that judgment because the judgment in that case went a great deal further than the facts in the case then before the Calcutta Bench. A case on the other side following *Emperor* v. *Hardwar Pal*(1) is reported in *Emperor* v. *Gurditta*(2) a decision of a single Judge. There the accused made a report to the police against seven persons five of whom were sent up for trial in a magistrate's Court and the other two were not sent up and the charge against the accused was that he had brought a false case against them. The Public Prosecutor filed a complaint against the accused to that effect and the latter was committed for trial by the magistrate. It was held that the offence under section 211, Indian Penal Code, if any, committed by the accused was committed by him in relation to a proceeding in Court, and that as the sanction of the Court was not obtained and there was no complaint by it, the Committing Magistrate had no power to take cognizance of the offence. In *Daroga Gope* v. *King-Emperor*(3) the Court had to consider what offences may be said to have been committed in relation to the proceedings in a Court within the meaning of section 195 (1) (*b*) of the Code of Criminal Procedure. There the petitioner laid a false charge before the police which caused the police to submit a report against the petitioner which in its turn caused the petitioner to institute a judicial proceeding before the magistrate by lodging a formal complaint and repeating the allegations made in his information to the police and the magistrate on the written complaint of the Sub-Inspector of Police summoned the petitioner under sections 211 and 182, Indian Penal Code, and it was held that the laying of the false information before the police was an offence committed in relation to a judicial proceeding and the magistrate had no jurisdiction to summon the petitioner under section 211, Indian

(1) (1912) I.L.R. 34 All. 522. (2) (1916) 39 I.C. 692.
(3) (1925) I.L.R. 5 Pat. 33.

THE REGISTRAR, HIGH COURT, MADRAS v. KODANGI.

Penal Code, without a complaint made in writing by the Court under section 195 (1) (*b*). In this case *Emperor* v. *Hardwar Pal*(1) and *Brown* v. *Ananda Lal Mullick*(2) were considered.

As it appears to us that conflicting views have been taken in the cases referred to, we consider it necessary to refer the following questions to a Full Bench:—

(1) When a charge is made by a complainant to the police against more than one individual and the police while charging before the Court one or more of such individuals of the offence complained of, do not charge them all, is a complaint of the Court under section 476 of the Code of Criminal Procedure necessary to prosecute the complainant under section 211, Indian Penal Code, in respect of the person or persons whom the police have not charged before the Court?

(2) If the answer is in the negative, is such a complaint under section 476 of the Code of Criminal Procedure required on the particular facts of this case, owing to the complaint telegram having been exhibited and filed for the prosecution?

ON THIS REFERENCE:

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

K. S. Jayarama Ayyar and *G. Gopalaswami* for respondent.

Cur. adv. vult.

The OPINION of the Court was delivered by

WALLACE J. WALLACE J.—The two questions referred to the Full Bench are: first, when a charge is made by a complainant to the police against more than one individual, and the police, while charging before the Court one or more of such individuals of the offence complained of, do not charge them all, is a complaint of the Court under section 476 of the Code of Criminal Procedure necessary to prosecute the complainant under section 211, Indian Penal Code, in respect of the person or persons whom the police have not charged before the Court; second, if the answer is in the negative, is such a complaint under

(1) (1912) I.L.R. 34 All. 522. (2) (1916) I.L.R. 44 Calc. 650.

section 476 of the Code of Criminal Procedure required on the particular facts of this case owing to the complaint telegram having been exhibited and filed for the prosecution? What question I is intended to cover is whether in the circumstances stated the Court had jurisdiction or was competent to act under section 476. It is unnecessary to go more into detail into the facts. Question I sufficiently sets out the necessary data.

Under section 476 of the Code of Criminal Procedure the Court only gets jurisdiction to inquire and make a complaint under section 211, Indian Penal Code, if the offence under section 211 appears to have been "committed in or in relation to any proceeding in any Court". Here there is no question of an offence having been committed in the Court, and the point is whether the words "in relation to any proceeding in any Court" are wide enough to cover the case stated. The "false" complaint was in a telegram to the District Superintendent of Police charging four persons with stabbing another. The police investigated and charged only one of these four with the stabbing and the trial of that charge is the relevant "proceeding" in the Court, as the charge of stabbing against the other three was not brought before the Court and did not properly form the subject-matter of any inquiry or trial before the Court.

The combined effect of sections 195 (1) (*b*) and 476 of the Code of Criminal Procedure is restrictive. In so far as the matter to be dealt with under the various sections mentioned in section 195 (1) (*b*) is in relation to a proceeding in a Court, the unrestricted authority of the police to arrest for and charge a cognizable offence is taken away. In a case under section 211, Indian Penal Code, when the police or the complainant or any one else brings the charge, which is the subject-matter of the offence, to trial in a Court, then it may be fairly

THE REGISTRAR, HIGH COURT, MADRAS v. KODANGI.

WALLACE J.

contended that the offence has been committed in relation to a proceeding in the Court. But where neither the complainant nor the police nor any one else brings it into Court, we can see no sound reason why the Court should interpret sections 195 and 476 of the Code of Criminal Procedure so as to hamper the otherwise unrestricted right of any one to complain direct of the offence under section 211, Indian Penal Code. We do not think that the fact that the trial was the effect of the complaint *ipso facto* brings all matters mentioned in the complaint "in relation to" the trial, or in fact brings any matters mentioned in the complaint into that relation except those which are relevant to the charge being tried in the trial itself. It is not difficult to conceive of cases where false matters might be stated in a complaint to the police but are not made matter of charge or trial because they were wholly separable from the subject of the proceeding in Court and have no real relation to it. Judicial action taken solemnly by the Court under section 476 of the Code of Criminal Procedure should be confined to cases in which the observation of the Court itself or an inquiry or trial *ad hoc* has brought the offence to notice.

Not many rulings on the point are cited before us. Those that assist are *Muhammada* v. *The Crown*(1), *Emperor* v. *Hardwar Pal*(2) and *Emperor* v. *Kashi Ram*(3). The earliest of these is *Emperor* v. *Hadwar Pal*(2) which is to the effect that, in a case like the present, under the old section 195, the sanction of the Court would be necessary. In *Emperor* v. *Kashi Ram*(3) the referring Judge doubted the correctness of *Emperor* v. *Hardwar Pal*(2) and went further, holding that a complaint not made to the Court could not retrospectively

(1) (1928) I.L.R. 9 Lah. 408. (2) (1912) I.L.R. 34 All. 522.
(3) (1924) I.L.R. 46 All. 906.

be regarded as in relation to a proceeding in the Court, merely because it had subsequently come to be tried by the Court. The Bench agreed with him so far as to hold that a charge made against one person and others will not amount to a charge against him in relation to a proceeding in Court simply because the others were brought to trial. This was followed by a Bench in Lahore in *Muhammada* v. *The Crown*(1). The ruling in *Tayebulla* v. *Emperor*(2) which the Bench in Lahore follows would indicate that the Calcutta Court holds that it is only in so far as the police or the complainant himself had brought the complaint to the stage of a judicial inquiry or trial that section 476 of the Code of Criminal Procedure will apply. That is on the lines of the Lahore and the later Allahabad ruling. We find ourselves in agreement with these views. We would therefore answer the first question that when the charge is made by the complainant to the police against more than one individual, and the police, while charging before the Court one or more of such individuals with the offence complained of, do not charge them all, the Court has no jurisdiction to take action under section 476 against the complainant in respect of those not so charged.

As to question II, we are agreed that the mere fact of the telegram being exhibited and filed in the case does not make the contents of it a matter "in relation to the proceeding" in the Court, so as to give the Court jurisdiction to take action under section 476 of the Code of Criminal Procedure.

K.N.G.

(1) (1928) I.L.R. 9 Lah. 408. (2) (1916) I.L.R. 43 Calc. 1152.