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April 4.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Straight.

QUEEN-EMPRESS *v.* BUDH SEN AND ANOTHER.

Act XLV of 1860 (*Indian Penal Code*) *s.* 182—*Definition of offence provided for in s.* 182 *explained.*

In order to constitute the offence defined in s. 182 of the Indian Penal Code it is not necessary that the public servant to whom false information is given should be induced to do anything or to omit to do anything in consequence of such information. The gist of the offence is not what action may or may not be taken by the public servant to whom false information is given; but the intention or knowledge (to be inferred from his conduct) of the person supplying such information. *Golam Ahmed Kazi* (1) dissented from.

The facts of this case are fully stated in the judgment of Straight, J.

Mr. *W. Colvin*, Hon'ble Mr. *Spankie*, Mr. *A. H. S. Reid* and Pandit *Sundar Lal*, for the petitioners.

The Public Prosecutor, Mr. *C. Dillon*, for the Crown.

STRAIGHT, J.—This is an application for revision of an order in appeal passed by the District Judge of Aligarh on the 4th December 1890, affirming a decision of the Assistant Magistrate of the same place, dated the 17th November 1890, by which he convicted the two petitioners, Budh Sen and Narain Das, of offences under s. 182 of the Indian Penal Code and sentenced them respectively to undergo rigorous imprisonment for four months, and severally to pay a fine of Rs. 300, and in default of payment to suffer a further term of imprisonment for one month and fifteen days. The facts which have been found by both the lower Courts, behind whose findings in that respect I cannot go, are as follows:—The petitioners are banias by caste residing in different muhallas of the city of Aligarh, but having their places of business in Pidruganj. On the evening of the 24th August 1890, about 9 P.M., the then Magistrate of the district, who was out on duty in connection with the Muharram festival then going on, received a telegram which, no doubt, came from Budh Sen and Narain Das, couched in the following terms:—"Yesternight at one, two hundred Kasais Phopala, bearing lathis, attacked Kalyanganj, Pidruganj, for

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plunder and murder. Sadik Ali, Kotwal, Shiam Lal, Jamadar, dispelled them: there is danger from them to-night also: please arrange." The Magistrate in his evidence, which was given on the hearing of this charge, stated that he took no action on the telegram, as he did not believe the statements. Had he done so, he would have sent police to take care of the places mentioned in it. It is in respect of the sending of this telegram to the Magistrate of the district that the petitioners have been convicted under s. 182 of the Indian Penal Code. Mr. *Colvin*, who argued the petition for revision, has urged that it was a bad conviction in law, because there was nothing in the terms of the telegram to show that the persons who sent it intended to cause or knew it to be likely that they would thereby cause a public servant to use his lawful power to injure or annoy any particular person or persons, or to do or omit to do anything which he ought not to have done or have omitted to do had the true state of facts in regard to which such information was given been known to him. In support of his contention he has referred to the case of *Golam Ahmed Kazi* (1) and no doubt there the Chief Justice of Bengal remarks that as to s. 182, "that section must be read as a whole, and taken as a whole, we think it applies to those cases in which the police are induced upon the information supplied to them to do or omit to do something which might affect some third person and which they would not have done had they known the true state of things." If this view is correct it goes even further than the exigencies of the learned counsel's contention required; but, with the most profound respect for the learned Chief Justice and the Judge who agreed with him, I regret that I cannot concur in the opinion so expressed. It appears to me to proceed, first, upon an erroneous apprehension of the scope and object of s. 182 and the mischief at which it was aimed, that section appearing in the chapter relating to "contempts of the lawful authority of public servants," and, secondly, upon an erroneous construction of the language of the section itself. I cannot, having carefully examined the terms of the section, come to the conclusion that it is essential for the public servant mentioned

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therein to have been induced to do anything or to omit to do anything. It is sufficient if the party charged gave information which was false, with the intention of causing or knowing it likely that a public servant would be caused to exercise his lawful power or authority to the injury of an individual, or to do or omit to do something which he ought not to do or omit to do were the true state of facts known to him. In other words, the criminality contemplated by s. 182 does not depend upon what is done or omitted to be done by the public servant on such false information, but what was, from the facts, the reasonable intention to be inferred on the part of the person who gave the false information. I also wish to remark that it seems to me that s. 182 contemplates two intentions on the part of the person giving the false information: first, the intention to cause or the knowing it to be likely that he will thereby cause a public servant to use his lawful power to the injury or annoyance of any person or persons, and, secondly, the intention to cause or the knowing it to be likely that he will thereby cause such public servant to do or omit to do some act, which, if the true state of facts were known to him, he would not do or omit to do. Applying this construction of the section to the facts of this case, I am quite unable to say that the convictions of these two persons were wrong. The Magistrate has said that if he had believed the statements contained in the telegram he would have sent police to take care of the places mentioned in it. The result would have been that he must have withdrawn police from other parts of the town, and, moreover, he might, with this telegram before him, have caused a considerable body of police to go into the Kasais' quarter to keep them in their houses and prevent them creating a disturbance. It is immaterial, however, to consider the precise nature of the action of the Magistrate; the question is, what action the persons who sent that telegram contemplated that the Magistrate would take? At least they intended and contemplated that the Magistrate would do some act, which, had he known the true facts, he would not have done.

In my opinion this is the kind of mischief at which the latter portion of s. 182 is aimed. Persons are not, by making reckless

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statements to a public servant, to bring the office of that public servant into contempt, and it is absolutely indifferent whether, by means of false information given with any of the intentions I have mentioned, he is or is not induced to do or omit to do any act. The criminality of the party is determined by his giving information which he knows or believes to be false with certain specified intentions to the nature of which I have referred. The convictions are most proper and should be sustained. The offence is a most mischievous one, particularly at such a time as this telegram was sent, when the relations between the Muhammadans and the Hindus of Aligarh were greatly strained and the magisterial authorities were placed in a position of great difficulty and delicacy to prevent friction and disturbance between these two sections of the community. False information given to the Magistrate at such a time, which might lead him to take action which, if he had known the truth, he would not have taken, might have led to most serious consequences, and it is well that people should understand that offences of this description will not be punished merely with a fine. The only thing to be said for these petitioners is that they did put their names to the telegram that was sent and that there was no difficulty in discovering its origin. I hope I am not showing undue leniency if, while rejecting the application for revision in its main details and sustaining the fine of Rs. 300, I reduce the term of rigorous imprisonment from four to two calendar months.

EDGE, C. J.—It appears to me that the High Court at Calcutta in the case of *Golam Ahmed Kazi* (1) read s. 182 of the Indian Penal Code as if no offence could be committed under that section unless the public servant referred to in it had been induced by information supplied to him to do or omit to do something which might affect some third person, and which he would not have done or omitted to do had he known the true state of things. I entirely agree with my brother Straight that the question whether the public servant was induced to take action or to omit to take action is abso-

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lutely immaterial so far as this section is concerned. The offence is giving information which the informant knows or believes to be false and his intention thereby to cause or his believing or knowing it to be likely that he will thereby cause the public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which the said public servant ought not to do or omit if the true state of facts respecting which information is given were known by him. It appears to me that there may be many cases, which, in truth, may be cases of hoaxes, which would still come within this section; as, for example, suppose a man, knowing the statement to be untrue, but intending the Magistrate to act upon it, informed the Magistrate of the District that a violent fire was raging in a city in the District of which he had charge. Now if the Magistrate believed that statement he would naturally send as many police as he could spare to assist in quelling the fire and keeping order. He might possibly also ask for the assistance of the military, if there were any in the neighbourhood. That would be a perfect example of a hoax, and I have not a doubt that it would come within s. 182, whether the Magistrate acted upon the information or not. To take another example of a case which in my opinion would come within the section, although the public servant was not induced to taken action or to omit to take action upon the information given to him. Let us say that a man had absconded for an offence from Allahabad and that it was surmised that he would seek to escape at one of the shipping ports. Information of his having absconded would be communicated to those ports, Calcutta amongst the number. A person who, knowing that that man had not been arrested, and intending that the authorities at Calcutta should cease to watch the outward bound shipping, telegraphed to the authorities at Calcutta informing them that the absconder had been arrested elsewhere, would in my opinion have committed an offence under s. 182, although the public servant at Calcutta had not acted on the telegram but had persisted in his surveillance of the outward-bound shipping. I agree with my brother Straight that the intention of the Legislature was that a public servant should not be falsely given information with the intent

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that he should be misled by a person who believed that information to be false and was intending to mislead him. In this particular case, probably a sentence of two months' rigorous imprisonment and a fine of Rs. 300 will be sufficient to operate as a warning to others who may desire to give false information to public servants; and they may take this further warning that, if in future in similar cases the full penalty given under s. 182 is awarded, I shall hesitate before interfering with such a sentence. The application for revision to the extent of the punishment being reduced is allowed, otherwise it is rejected.

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April 7.

APPELLATE CIVIL.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

DURGA DAI (OPPOSITE PARTY) *v.* BHAGWAT PRASAD (PETITIONER).*

Execution of decree—Act IV of 1882 (*Transfer of Property Act*) *s.* 90—*Nature of decree contemplated by that section.*

The plaintiff obtained a decree on a hypothecation bond, the decree providing that the money secured by the bond was to be realised by sale of the hypothecated property, and, if that proved insufficient to satisfy the decree, by sale of other property of the judgment-debtor. The hypothecated property was sold and the proceeds were not sufficient to satisfy the decree. The decree-holder thereupon applied for enforcement of that portion of the decree which related to the other property of the judgment-debtor. To this application it was objected that it was necessary to obtain a decree under s. 90 of the Transfer of Property Act (IV of 1882). This objection was allowed and the decree-holder applied for and obtained a decree under the said section. The judgment-debtor then appealed against that decree on the ground, amongst others, that, looking to the terms of the original decree, the application under s. 90 was superfluous.

Held that the decree contemplated by s. 90 of the Transfer of Property Act is in fact an order to be obtained in execution of a decree for sale; and though in the present instance the application for such a decree may have been superfluous, it may nevertheless be regarded as an application for execution of a decree by enforcement of a portion of it against property other than the mortgaged property. *Miller* v. *Digambari Debya* (1) distinguished; *Hafiz-ud-din Ahmad v. Damodar Das* (2) and *Raj Singh* v. *Parmanand* (3) referred to.

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*First Appeal No. 70 of 1890 from an order of Babu Brijpal Das, Subordinate Judge of Gorakhpur, dated the 11th January 1890.

(1) Weekly Notes 1890, p. 142. (2) Weekly Notes 1889, p. 149.
(3) I. L. R, 11 All, 486.