1893

LALJI LAL v. C. J. BARBER.

is right in holding that it is incumbent on the executing Court to execute the decree as it stands, the execution not being barred by limitation or otherwise. The appeal is dismissed with costs.

Appeal dismissed.

1893 *May* 16th.

REVISIONAL CRIMINAL.

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

QUEEN-EMPRESS *v.* RAGHU TIWARI.

Act XLV of 1860, *s.* 182—*False information to a public servant—False complaint to the police.*

Where as the result of a Police investigation it appears that a complaint made to the Police of the commission of an offence punishable under the Indian Penal Code is false, it is not necessary that the complainant should be given any further opportunity of establishing the truth of his allegations before his prosecution under s. 182 of the Indian Penal Code is proceeded with.

This was a reference by the Sessions Judge of Ghâzipur under s. 438 of the Code of Criminal Procedure, 1882. The facts of the case sufficiently appear from the judgment of the Court.

The Public Prosecutor (Mr. *A. Strachey*), for the Crown.

EDGE, C. J. and AIKMAN J.—Raghu on the 11th of December gave information to the Police that one Budhan had committed theft. The Police inquired into the matter, and came to the conclusion that the information was false. On the 17th of December 1892, the matter came before a Magistrate of the first class. On the Police report the Magistrate directed proceedings to be taken against Raghu under s. 182 of the Indian Penal Code. On the 19th of December, a summons was issued against Raghu and on the 24th, was served upon him. The summons called upon him to appear on the 5th of January 1893, to answer the charge. On the 3rd of January 1893, Raghu presented to the Court of the Magistrate a petition, dated the 2nd of January, in which he referred to the complaint made by him and to the proceeding against him under s. 182 of the Indian Penal Code, and asked that the latter proceeding should stand over until his complaint had been decided. The Magistrate did not

1893

QUEEN-EMPRESS v. RAGHU TIWARI.

comply with the prayer of that petition, but proceeded with the charge against Raghu, and having, on the 17th of January, convicted him on a summary trial of the offence under s. 182, sentenced him to three months' rigorous imprisonment. Raghu applied to the Sessions Judge of Ghâzipur to revise the order of the Magistrate of the 17th of January 1893. The Sessions Judge requested an explanation on certain points. The Magistrate sent his explanation. The Sessions Judge put forward his views in reply, and sent the case to this Court for us to exercise our powers of revision. The view of the Sessions Judge is that it was illegal on the part of the Magistrate to proceed and decide the charge under s. 182 of the Indian Penal Code before the complaint of Raghu had been adjudicated upon in accordance with his application of the 3rd of January 1893. The Sessions Judge and the Magistrate in their correspondence, and apparently on the invitation of the Sessions Judge, discussed many points which may have been of interest to them. The cases in this Court cannot be reconciled. Many of those cases relate to proceedings under s. 211 of the Indian Penal Code. Although it is difficult to see what case could arise under s. 211 to which s. 182 could not be applied, yet s. 182 would apply to a case which might not fall under s. 211. The offence under s. 182 is complete when false information is given to a public servant by a person who believes it to be false, but who intends thereby to cause such public servant to institute criminal proceedings against a third person. The offence is complete although the public servant takes no step towards the institution of such criminal proceedings. In our opinion it is in such a case not at all necessary that the public servant should take any step whatever on the false information before instituting and prosecuting to a conclusion a charge under s. 182 against the person who had given such false information. Assume, as in this case, that inquiries were made on the false information, and that not only was it shown that the information was false, but the corrupt and wicked motive of the informant was apparent; in our opinion, it would be absurd that the informant should be called upon to proceed with a false charge which inquiries had shown to be false, and that the proceedings against him under s. 182 should be delayed

1893

QUEEN-EMPRESS v. RAGHU TIWARI.

until the informant, and such witnesses as he might be able to call in support of his complaint, had had afforded to them by the Magistrate an opportunity of committing the further offence of perjury. We are well aware that it may be objected that in this view the Police are in the first instance made the judges of whether the informant's complaint was true or false. As the matter would not finally rest with them, and would have to be determined by a competent Court, some discretion and reliance may be placed in the Police, and in fact in some cases that discretion is by law reposed in them. In cases to which s. 211 especially applies, and in which a criminal proceeding has been instituted, a Court should, in our opinion, as a rule proceed to determine such criminal proceeding instituted in it and should give the person instituting such proceeding, a reasonable opportunity of supporting his case before proceeding against him for an offence under s. 211. We are unable to ascertain that there is any restriction imposed by the Indian Penal Code or by the Criminal Procedure Code of 1882 upon the prosecution of an offence either under ss. 182 or 211. It appears to us that it has been left to the discretion of the Court to determine when and under what circumstances prosecutions should be proceeded with under ss. 182 and 211. We think that discretion would, as a rule, be rightly exercised by the Court proceeding to dispose of the criminal proceeding then pending before it before taking action under ss. 211 or 182 against the person who had instituted such criminal proceeding, or on whose information such criminal proceeding had been instituted. In this particular case the procedure of the Magistrate was in our opinion entirely regular. We are of opinion that the application which was made on the 3rd of January 1893, was filed either, as the Magistrate thought, merely as a defence, or for the purpose of delay. We see no reason for interfering with the conviction and sentence. The record will be returned and a copy of this judgment will be sent to the Magistrate concerned.