

BY THE COURT :—The order of the Court is that the appeal be dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Griffin and Mr. Justice Chamier.

EMPEROR v. MATAN.*

Act No. XLV of 1860 (Indian Penal Code), section 182—Transfer—Unfounded allegations against the trying magistrate made by an accused person in an application for transfer of his case.

Held that an accused person, who in support of an application for the transfer of the case against him to some other Magistrate makes unfounded and defamatory allegations against the trying Magistrate, cannot be prosecuted in respect of such allegations under section 182 of the Indian Penal Code. *Queen v. Daria Khan (1) and Queen-Empress v. Subbayya (2)* referred to.

THE facts of this case were as follows :—

One Ramdoo lodged a complaint against Matan of an offence under section 323 of the Indian Penal Code in the court of the Sub-Divisional Magistrate. The case was made over to a Tahsildar Magistrate for trial. The case had not proceeded far when Matan presented a petition to the Sub-Divisional Magistrate praying him to transfer the case from the court of the Tahsildar Magistrate to some other court. In the course of the petition the applicant stated as one of the reasons for a transfer of the case that it had been instituted at the instance of the Tahsildar because the applicant had declined to accede to the Tahsildar's request that he should stand security for a man named Mangalia. The allegation was entirely without foundation. The Sub-Divisional Magistrate examined the applicant on oath in support of the application for transfer and the applicant then repeated his accusation against the Tahsildar. The Sub-Divisional Magistrate on this directed the applicant to be prosecuted in respect of these allegations under section 182 of the Indian Penal Code. Against this order the applicant applied in revision to the High Court.

* Criminal Revision No. 364 of 1910 against the order of Raghubar Dayal Misra, Magistrate, first class, of Hamirpur, dated the 5th of May, 1910.

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JAWAHIR
LAL.

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MATAN.Babu *Satya Chandra Mukerji*, for the applicant.The Assistant Government Advocate (*Mr. R. Malcomson*)
for the Crown.

CHAMBER, J.—This is an application for revision of an order passed by a Sub-Divisional Magistrate, directing the prosecution of the applicant for an offence under section 182 of the Indian Penal Code.

It appears that one Ramdoo lodged a complaint against the applicant of an offence under section 323 of the Code in the court of the Sub-Divisional Magistrate. The case was made over to a Tahsildar Magistrate for trial. The case had not proceeded far when the applicant presented a petition to the Sub-Divisional Magistrate praying him to transfer the case from the court of the Tahsildar Magistrate to some other court. In the course of the petition the applicant stated as one of the reasons for a transfer that the case had been instituted at the instance of the Tahsildar because the applicant had declined to accede to the Tahsildar's request that the applicant should stand security for a man named Mangalia. The allegation was entirely without foundation. The Sub-Divisional Magistrate examined the applicant on oath in support of the application for transfer and the applicant then repeated the accusation against the Tahsildar. It is in respect of this accusation that the applicant has been ordered to be prosecuted.

It has been held repeatedly by this court that an accused person who makes a false affidavit in support of an application for transfer cannot be prosecuted in respect of the affidavit under section 193 of the Indian Penal Code, and it has been held that an accused person applying for a transfer cannot be prosecuted under section 228 of the Code in respect of scandalous or insulting allegations made against a magistrate in the application for a transfer. Such a person may be prosecuted under section 500 of the Code in respect of defamatory statements made in the application, but in the only reported case that I am aware of the prosecution failed on the ground that the case fell within the 9th exception stated in that section. It appears to me that the applicant cannot be prosecuted under section 182 of the Indian Penal Code in respect of statements made by him during his examination

on oath by the Sub-Divisional Magistrate, because the statements were made in answer to questions put by the magistrate and the applicant cannot be said to have been giving information within the meaning of section 182, when he was under examination.

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But the question whether he may be prosecuted under section 182, in respect of statements made in his application for transfer is one of some difficulty. There is a note in the Current Index of Cases for 1908 of a case of *Imperator v. Khan Muhammad* (1), in which an accused person who made false allegations in an affidavit in support of an application for a transfer was prosecuted under section 182, but with that exception I have been unable to find any case in which such a prosecution was attempted or allowed. The report of the case referred to is not available.

It was held in *Queen v. Daria Khan* (2) that statements made by a prisoner for the purpose of his defence cannot be held to be information given to a public servant within the meaning of section 182 of the Indian Penal Code. It appears to me that the applicant was in the position of an accused person when he presented the application for a transfer. Had the case been pending in the court of a magistrate having power to make over cases to other magistrates, *e. g.*, a District Magistrate or Sub-Divisional Magistrate and the allegation had been made concerning some magistrate to which it proposed to transfer the case, there would, I suppose, be no doubt that the case was covered by the decision in *Queen v. Daria Khan*, of which, if I may say so, I entirely approve. It seems to me that it can make no difference that the statement was made to a magistrate other than that in whose court the case was pending. I hold that the applicant was at the time in the position of an accused person, and I think it would be straining the language of section 182 to hold that a statement made in such circumstances was information given to a public servant within the meaning of that section. I feel confident that the section was never intended to apply to such a case. The view which I take is supported by the decision of the Madras High Court in *Queen-Empress v. Subbayya* (3).

(1) 1 Sind L. R., 124. (2) (1870) 2 N.-W. P., H. C. Rep. 128.

(3) (1889) 1. L. R., 12 Mad., 451.

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I would set aside the order for the prosecution of the applicant.

GRIFFIN, J.—I concur.

BY THE COURT :—The order of the court is that the order of the magistrate sanctioning prosecution under section 182 of the Indian Penal Code is set aside.

Application allowed.

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August 10.

APPELLATE CIVIL.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.
ROSHAN LAL (PLAINTIFF) v. THE DELHI CLOTH AND GENERAL
MILLS COMPANY, LIMITED, DELHI (DEFENDANT).*

Contract—Sale—Deposit—Failure of purchaser to complete contract—Vendor entitled to retain deposit.

Plaintiff agreed to purchase 500 bales of cotton yarn from defendants and to deposit 5 rupees per bale as earnest money. He deposited somewhat more than half of the earnest money and thereafter repudiated the contract. *Held* that plaintiff was not entitled to recover that portion of the earnest money which he had paid. *Collins v. Stimson* (1), *Howe v. Smith* (2), *Ex parte Barrell*; *in re Parnell* (3) and *Bishan Chand v. Radha Kishan Das* (4) referred to.

THIS was a suit by the purchaser to recover a sum of Rs. 1,300 paid by him as earnest money on a contract for the purchase of cotton. The plaintiff agreed to take 500 bales of cotton yarn and to deposit as earnest money Rs. 5 per bale; if the earnest money was not deposited within two days the defendants were to be at liberty to adhere to or cancel the contract. The plaintiff paid Rs. 1,300 out of the earnest money, but failed to pay the balance, and thereafter repudiated the contract. Subsequently the plaintiff sued for the return of the earnest money which he had deposited. The claim was decreed by the first court, but on appeal this decree was set aside and the suit dismissed. The plaintiff appealed to the High Court.

Munshi *Gulzari Lal*, for the appellant.

Pandit *Baldeo Ram Dave*, for the respondents.

* Second Appeal No. 588 of 1909, from a decree of H. J. Bell, District Judge of Aligarh, dated the 10th of March, 1909, reversing a decree of Pitambar Joshi, Extra Additional Subordinate Judge of Aligarh, dated the 25th of June 1908.

(1) (1883) 11 Q. B. D., 142.

(2) (1884) L. R., 27 Ch. D., 89.

(3) (1885) L. R., 10 Ch., App., 512.

(4) (1897) L. L. R., 19 All., 489.