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setting aside that order, which was an *ex parte* order, and we think that he had power to do so, inasmuch as it is open to every court to correct such mistakes. Such being the case, the view taken by the learned District Judge is not correct. The result is that we allow the appeal, set aside the order of the learned District Judge, and send back the case to him for the decision of the appeal on its merits. The appellant will be entitled to his costs of this appeal.

Appeal allowed.

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May, 11.

REVISIONAL CRIMINAL.

Before Mr. Justice Karamat Husain and Mr. Justice Tudball.

EMPEROR v. HARDWAR PAL.*

Act No. XLV of 1860 (Indian Penal Code), sections 182, 211—Sanction to prosecute—Criminal Procedure Code, section 195.

H. made a report against several persons, including one *S.*, at a police station, charging them with rioting and voluntarily causing hurt. The police made inquiry and sent up several persons for trial, but not *S.* Some of these were convicted by the Magistrate, but acquitted by the Sessions Judge. Thereupon *S.* made a complaint to the Magistrate, charging *H.* with having made a false report in respect of himself to the police. The Magistrate took cognizance of the complaint.

Held that the Magistrate had no power to take cognizance of the complaint by reason of the absence of sanction.

The facts of this case were as follows :—

On the 23rd of March, 1911, a report was made to the police by Hardwar Pal to the effect that several persons named therein, including one Sher Bahadur Singh, had committed the offence of rioting. The police instituted a case against some of the persons named, but not against Sher Bahadur. The accused were tried and some of them convicted by a Magistrate. These latter appealed to the Sessions Judge, who acquitted them. Sher Bahadur then filed a complaint under the first portion of section 211 of the Indian Penal Code against Hardwar Pal, who objected that the case could not proceed without the sanction of either the Superintendent of Police or the Court. The Magistrate held that no sanction was necessary and issued process against the accused. Hardwar Pal then applied in revision to the High Court.

The application came on for hearing before KARAMAT HUSAIN, J., who referred it to a bench of two Judges.

* Criminal Revision No. 164 of 1912 from an order of Kamta Prasad, Magistrate, first class, of Basti, dated the 2nd of February, 1912.

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The case was subsequently heard by KARAMAT HUSAIN and TUDBALL, JJ.

Mr. *C. Ross Alston*, for the applicant :—

The Magistrate was wrong in holding that no sanction was necessary. If the offence were treated as that of making a false charge to the police, it would fall under section 182 of the Indian Penal Code, and the sanction of the Superintendent of Police would be necessary. If, however, the offence is to be taken as one falling under section 211, the sanction of the court before which the original case had come would be necessary.

Babu *Piari Lal Banerji* (for Babu *Durga Charan Banerji*), for the opposite party :—

The real question is whether there is in the present case anything in law debarring a Magistrate from taking cognizance of the offence in respect of which the complaint was filed. It is quite clear that if the offence charged falls under any of the clauses of section 195 of the Criminal Procedure Code, sanction would be necessary. As the complaint did not allege the commission of an offence under section 182 there was nothing to prevent the Magistrate from taking cognizance of the offence alleged, if it did not come within any of the clauses of section 195. If the facts alleged in the complaint constituted no offence other than an offence under section 182 of the Penal Code, it might then have been contended that the mere mention of another section of the Code could not take the case out of the purview of clause (*a*), section 195 of the Criminal Procedure Code. But the false report to the police did constitute an offence under the first part of section 211 of the Penal Code, though the case did not come into court.

This Court has held that section 211 consists of two parts; the first contemplates a charge made to the police and the second a false charge preferred in court. Therefore, although a false charge made to the police constitutes an offence under section 182 of the Penal Code, it is also an offence under the first part of section 211 of the same Code.

He cited *Empress of India* v *Pitam Rai* (1), *Empress* v. *Parahu* (2), *Queen-Empress* v. *Bisheshwar* (3), *Imperatrix* v. *Jijibhai Govind* (4), *Queen-Empress* v. *Karim Buksh* (5),

(1) (1883) I. L. R., 5 All., 215.
(2) (1883) I. L. R., 5 All., 598.
(3) (1894) I. L. R., 16 All., 124.
(4) (1896) I. L. R., 22 Bom., 596.
(5) (1887) I. L. R., 14 Calc., 633.

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Karim Buksh v. *Queen-Empress* (1) and *Queen-Empress* v. *Nanjunda Rau* (2).

It is, therefore, quite settled that the offence charged would fall under section 211, as the charge was not made in court; and as Sher Bahadur Singh was never sent up for trial, the offence, though falling under section 211, was not one committed in or in relation to any proceeding in any court. Section 195, clause (*b*) of the Criminal Procedure Code, does not require sanction for all offences under section 211, but only requires sanction where an offence under section 211 is committed in or in relation to any proceeding in any court. It does not require sanction when the offence is committed before the police; *Ashrof Ali* v. *The Empress* (3), *Putiram Ruidas* v. *Mahomed Kasem* (4), *Dharmadas Kawar* v. *The Emperor* (5).

It may be said that case was sent up by the police as regards some of the persons named in the report, and that therefore the report constituted an offence committed in relation to a proceeding in court; but Sher Bahadur Singh, the person named in the report, had no connection whatever with any proceeding in any court. The wrong committed against him was the making of a false report to the police, and as far as he was concerned, there was no proceeding in court. The false report, although it named several persons in one document, was really a report of distinct and several offences committed by different persons named in the report; and the matter must be looked at as if there were separate reports against each of the persons named. One particular person had nothing in common with another person; and the making of the report to the police became an offence relating to a proceeding in court only *qua* the persons who were sent up for trial and not against Sher Bahadur Singh, who was not so proceeded against.

Mr. *C. Ross Alston*, in reply:—

The argument in support of the Magistrate's order is based on certain rulings of doubtful validity which interpret section 211 of the Indian Penal Code in, it is submitted, a purely arbitrary manner. That section does no more than separate minor false charges from serious false charges, punishing the latter more

(1) (1888) I. L. R., 17 Calc., 574.
(2) (1897) I. L. R., 20 Mad., 79.
(3) (1879) I. L. R., 5 Calc., 281.
(4) (1899) 3 C. W. N., 93.
(5) (1908) 12 C. W. N., 575.

severely than the former. It does not purport to deal with the offence of making false reports to the police, but with false charges instituted in court, according as the offences "falsely charged" are minor or major offences. A false report to the police, which the complainant carries no further, is punishable under section 182. This is the view taken in Gour's Penal Code, where it is said that section 182 was intended to apply to a report made to the police or to some officer other than a magistrate competent to hold an inquiry; whereas section 211 applies to a definite accusation preferred in a court of law. In I. L. R., 19 Bombay, at page 725, Mr. Justice Ranade expressed the same view. See also I. L. R., 15 Allahabad, page 336. The position in the Penal Code of section 211 also supports this view. The contention put forward, if the rulings are correct, involves the following absurdity. For offences under sections 172 to 188 of the Indian Penal Code the sanction of the public servant concerned is necessary; and for offences under sections 193 to 211, the sanction of the court concerned is necessary; but no sanction at all is necessary if the false report is to be punished under section 211, although the case concerns the making of a false report to the police. The argument advanced is undoubtedly the logical outcome of the rulings cited, for section 211 is not in clause (*a*) of section 195 of the Code of Criminal Procedure; and as regards Sher Bahadur if no proceedings *against him* were taken in court, no sanction under clause (*b*) could be applied for. If this is correct, is it not more probable that the rulings relied on are unsound than that the Legislature could have intended, in such a case, to make a sanction unnecessary either by the police authority or by the court. It might, however, be held that, as the original case did in fact come into court, the offence now charged "related to" a proceeding in court. This would make it unnecessary to discuss the larger question, for clause (*b*) of section 195 of the Code of Criminal Procedure would then apply, and the sanction of the court which heard and dismissed the original case would be necessary before the case now pending could proceed.

KARAMAT HUSAIN and TUDBALL, JJ.—The facts out of which this application in revision has arisen are as follows:—

The applicant here went to a police station and made a report against several persons, of whom Sher Bahadur Singh was one. He

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accused them of the offences of rioting and voluntarily causing hurt. The police made inquiry and sent up several persons for trial, but not Sher Bahadur Singh.

The Magistrate tried the accused and the trial ended in the conviction of some of them. These latter appealed to the Sessions Judge, who acquitted them.

Thereupon Sher Bahadur Singh made a complaint to the Magistrate, stating the above facts against the present applicant, and charging the latter with having made a false report in respect to himself to the police, which, he said, constituted an offence under section 211 of the Indian Penal Code.

Objection was taken that the Magistrate could not take cognizance of the complaint without sanction obtained, and the terms of section 195 of the Code of Criminal Procedure were invoked to support the argument. The Magistrate has held that sanction is not necessary; hence the present application.

The facts stated in the complaint clearly constitute an offence under section 182 of the Indian Penal Code, i.e., the giving of false information to the police, but it has been held by this High Court that they also constitute an offence under the first half of section 211 of the Indian Penal Code.

The argument which found favour with the court below is as follows. If the complaint had been made of an offence under section 182 of the Indian Penal Code on the facts of the present case the sanction of the police officer would have been necessary under section 195 (1) *(a)*, Criminal Procedure Code, but that clause makes no mention of an offence punishable under section 211 of the Indian Penal Code; therefore as the complaint is laid under this latter section, no sanction is necessary. Section 195 (1) *(b)* relates only to proceedings in Court. This may perhaps be the natural result of the decision that the making of a false report to the police where the case has not come into court constitutes an offence under section 211 of the Indian Penal Code as well as one under section 182, but it leads to this absurdity that in the case of the lesser offence under section 182 a sanction is a *sine qua non*, whereas in the case of the more serious offence under section 211 a sanction is not at all necessary. It is unnecessary to set forth the reasons why the law lays down the necessity of a sanction in cases of the class mentioned in section 195 of the Code of Criminal Procedure. It is

obvious that they operate in the cases of both sections 182 and 211 of the Indian Penal Code, and it was never intended by the Legislature that complaint should be made in the circumstances of the present case without the sanction of the police officer concerned.

The difficulty might be solved by holding that in taking cognizance in the present case of an offence under section 211, the Magistrate is also taking cognizance of an offence under section 182, which he is forbidden to do by the terms of section 195 of the Code of Criminal Procedure without the sanction of the police officer concerned. He is, therefore, doing what is forbidden by the Code, and his action is illegal and *ultra vires*. The true solution may be as suggested by counsel for the applicant, that the Legislature never intended section 211 of the Indian Penal Code to apply to anything except charges preferred in court to a Magistrate, and enacted section 182 to cover such a case as the present. However, there are the rulings of this Court and other High Courts on the subject, and as we are able in the circumstances of the present case to do justice without going behind those rulings, it is, therefore, unnecessary to discuss the point further. In the present case, there were proceedings in court. On the basis of the alleged false report the police made inquiry and sent up some of the accused for trial. Assuming that Hardwar Pal falsely implicated Sher Bahadur Singh in his report, and that the offence he thereby committed was one under the first paragraph of section 211, still it is quite clear that this offence was one committed in relation to a proceeding in court. It is obvious that there is considerable relation between the first report and the proceeding in court, for the latter is the result of the former. The report led to the police inquiry and the latter to the proceeding in court. The offence if it be one under section 211 committed in respect to Sher Bahadur Singh was committed in relation to the proceeding in court, and at least the sanction of the court would be necessary under section 195 (1) *(b)*. The argument that there was a separate complaint made to the police against each of the persons named in the report is the mere splitting of a hair as well as of a report. There was one report which led to a proceeding in court.

Whichever view we take of the law, it is clear in the circumstances of this case that the Magistrate had no power to take cognizance of the complaint made by reason of the absence of sanction.

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We allow the application and quash the proceedings as the Magistrate s action is illegal.

Application allowed.

APPELLATE CIVIL.

1912
May, 14.

Before Mr. Justice Karamat Husain and Mr. Justice Tudball.

PIARI LAL AND OTHERS (PLAINTIFFS) *v.* MAKHAN AND OTHERS (DEFENDANTS).*

Act No. XVI of 1908 *(Indian Registration Act), section* 17 *(2) (xi)—Mortgage—Receipt for mortgage money—Registration.*

A receipt for money due upon a mortgage was given in the following terms:—"The bond is returned. No money remains due." *Held* on suit for recovery of the mortgage debt that the receipt did not require to be registered and that the words "no money remains due" did not purport to extinguish the mortgage.

This was a suit to recover money alleged to be due upon a mortgage by sale of the mortgage property. In defence a receipt was produced in the following terms:—"The bond is returned. No money remains due." The court of first instance (Additional Subordinate Judge of Meerut) found that the receipt was not proved, nor the payment of the mortgage money, and decreed the plaintiffs' claim. On appeal the Additional Judge held that the receipt was proved, and, reversing the decree of the court of first instance, dismissed the suit. The plaintiffs appealed, their main contention being that the receipt was inadmissible inasmuch as it was not registered.

Mr. *Nihal Chand* and Munshi *Benode Bihari*, for the appellants.

The Hon'ble Dr. *Sundar Lal* and Pandit *Vishnu Ram Mehta*, for the respondents.

KARAMAT HUSAIN and TUDBALL, JJ.—This was a suit upon a mortgage. One of the pleas in defence was payment of the entire sum due on it. In support of that plea a receipt, dated Asadh Sudi 3rd, Sambat 1950, corresponding to 16th June, 1893, was produced. The court of first instance came to the conclusion that the receipt was not proved and that the payment was not proved. It, therefore, decreed the claim. There was an appeal to

*Second Appeal No. 760 of 1911 from a decree of C. E. Guiterman, Additional Judge of Meerut, dated the 2nd June, 1911, reversing a decree of Muhammad Husain, Additional Subordinate Judge of Meerut, dated the 14th of November, 1910.