

REVISIONAL CRIMINAL.

1912,
November, 29.

Before Mr. Justice Tudball.

EMPEROR v. PHULEL.*

Act No. XLV of 1860 (*Indian Penal Code*), sections 182, 193—*Complaint—Statement made to the Magistrate as head of the police and not as a magistrate.*

P. appeared before a District Magistrate and made a statement in which he accused a certain police officer of having beaten him, demanded a bribe of him and locked him up in the police *hawalat*. He stated, however, that he did not wish to make a complaint, but only desired that an inquiry should be made. Nevertheless the Magistrate examined P. on oath, and subsequently, the charge having been found to be baseless, P. was convicted under sections 182 and 193 of the Indian Penal Code. *Held* that, inasmuch as P. had expressly stated that he did not wish to make a complaint, the statement must be taken to have been made to the District Magistrate, not as magistrate, but as head of the district police, and the conviction under section 193 of the Code could not be upheld.

The facts of the case are fully set forth in the judgement of the Court.

Babu *Lalit Mohan Bunerji* (for Mr. *W. Wallach*), for the applicant.

The Assistant Government Advocate (Mr. *R. Malcomson*), for the Crown.

TUDBALL, J.:—The applicant Phulel went to the District Magistrate and made a statement before him that a certain police officer had beaten him, demanded a bribe from him and locked him in the police *hawalat*. He added that he did not wish to make a complaint, as it would not be possible to prove the complaint, but he wished the District Magistrate to make an inquiry so as to prevent the police officer behaving tyrannically towards him. In spite of the fact that he stated that he did not wish to make a complaint, the Magistrate made him take the oath and make a statement. Inquiry disclosed that the charge was groundless. Phulel was put on his trial under sections 211 and 182, Indian Penal Code. The Magistrate came to the conclusion that section 211 did not apply as the man distinctly refrained from instituting a complaint, but held that he was guilty of offences under sections 182 and 193, Indian Penal Code, and sentenced

* Criminal Revision No. 844 of 1912 from an order of R. C. Tute, Additional Sessions Judge of Meerut, dated the 11th October, 1912.

him to separate sentences for each of those offences. On appeal the learned Additional Judge held that the man had committed only one offence and that he should not be punished twice over for the same act. He held that the facts established an offence under section 193, Indian Penal Code. He maintained the conviction and sentence under that section and set aside the conviction and sentence under section 182. It is quite clear that when the applicant stated that he did not wish to institute criminal proceedings or make a complaint, the Magistrate was not moved *qua* Magistrate, but only as district head of the police. It was unnecessary and perhaps unlawful for the Magistrate under these circumstances to have forced the man to take an oath. As the Additional Judge has said, the man committed only one offence. He either committed an offence under section 182 or 211, Indian Penal Code. The conviction under section 193 cannot stand. I, therefore, alter the finding of the court below to a conviction under section 182, Indian Penal Code, and I maintain the sentence of three months' rigorous imprisonment which was originally imposed under that section.

Conviction altered.

Before Mr. Justice Tudball.

BANARSI DAS *v.* PARTAB SINGH.*

Criminal Procedure Code, section 125—Security to keep the peace—Procedure—Appeal—Jurisdiction.

A District Magistrate taking action under section 125 of the Code of Criminal Procedure cannot treat an application made under that section as an appeal and reverse the order of a first class Magistrate on the facts. If he considers the order to be wrong on the merits he can exercise his revisional powers and submit the record to the High Court: but the cancellation of bonds contemplated by section 125 can only be on the ground that the bonds are no longer necessary.

In this case one Partab Singh was bound over by a magistrate of the first class to keep the peace. Partab Singh applied to the District Magistrate under section 125 of the Code of Criminal Procedure for cancellation of the bonds. The District Magistrate treated this application as an appeal; went into the evidence; passed an order accepting the appeal, and cancelled

* Criminal Revision No. 802 of 1912 from an order of Mahadeo Prasad, Officiating District Magistrate of Muzaffarnagar, dated the 19th of September, 1912.

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