

1880

BANDA  
HASAN  
v.  
ABADI  
BEGAM.

The present claim could only be made through the medium of the Civil Court, and the shape in which it is presented appears to us perfectly regular.

*Appeal dismissed.*

1881

December 24.

## APPELLATE CRIMINAL.

*Before Mr. Justice Oldfield.*

EMPRESS OF INDIA v. BHAWANI PRASAD AND ANOTHER.

*Act XLV of 1860 (Penal Code), s. 211—False charge—Act X of 1872 (Criminal Procedure Code), ss. 146, 147.*

Where a Magistrate dismisses a complaint as a false one under s. 147 of the Criminal Procedure Code, and decides to proceed against the complainant under s. 471, for making a false charge, he is not bound before so proceeding to give the complainant an opportunity of substantiating the truth of the complaint, by being allowed to produce evidence before him.

THIS was an appeal from a judgment of Mr. R. J. Leeds, Sessions Judge of Gorakhpur, dated the 8th September, 1881, convicting the appellants, Bhawani Prasad and Goli, of an offence under s. 211 of the Indian Penal Code.

The appellants had jointly made a complaint charging one Sheobhik and certain other persons with abetting the false personation of Bhawani Prasad before a Sub-Registrar of documents, an offence punishable under s. 82 of the Indian Registration Act, 1877. The Magistrate receiving the complaint, after directing a local investigation by the police into its truth, under s. 146 of the Criminal Procedure Code, dismissed it under s. 147, after examining the appellants. He then, being of opinion that the appellants had made a false charge against Sheobhik and the other persons, proceeded to make an inquiry into the case, and eventually committed the appellants for trial before the Court of Session for an offence under s. 211 of the Indian Penal Code. The Court of Session convicted the appellants of that offence.

On appeal to the High Court it was contended on behalf of the appellants, *inter alia*, that the Magistrate had improperly committed them for trial, as he had not given them an opportunity of substantiating the truth of the complaint they had preferred.

Mr. Simeon, for the appellants.

The *Junior Government Pleader* (Babu *Dwarika Nath Banarji*),  
for the Crown.

OLDFIELD, J.—The offence charged under s. 211, Indian Penal Code, has been clearly proved against the prisoners; but it is urged that the convictions should be set aside, inasmuch as they had no opportunity of proving the complaint they brought in the Magistrate's Court and which led to their committal and trial.

I find that the Magistrate examined them in respect of their complaint, and under ss. 146 and 147, Criminal Procedure Code, after directing an inquiry by the police, dismissed the complaint; and under s. 471, after making a preliminary inquiry, committed the accused for trial to the Sessions on charges of an offence under s. 211, Indian Penal Code. There is nothing illegal in the procedure of the Magistrate, and there is nothing in the law which requires that a complainant shall have an opportunity of substantiating his complaint, by being allowed to produce evidence before the Magistrate, before the latter can take steps against him under s. 471, Criminal Procedure Code. The commitment and trial are not therefore open to objection or liable to be set aside on the ground of illegality or irregularity. Even assuming the course taken by the Magistrate to have been irregular, it must be shown that the accused have been prejudiced thereby in their defence, before the conviction can be set aside, but nothing of the sort has been shown. They had full opportunity for proving the truth of their original complaint when put on their trial in the Sessions Court, and the fact that they had no opportunity in the Magistrate's Court to produce evidence in proof of their complaint in no way interfered with their proving it at the trial. In this view I am supported by the decision of this Court in *Empress v. Abul Hasan* (1) and *The Queen v. Subbanna Gaundan* (2).

(1) I. L. R., 1 All. 497.

(2) 1 Mad. H. C. Rep., 30.