

1880
November 16.

APPELLATE CRIMINAL.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Pearson.

EMPRESS OF INDIA v. BALDEO.

False charge—Contempt—Prosecution—Charge—Act XLV of 1860 (Penal Code), s. 211—Act X of 1872 (Criminal Procedure Code), ss. 468, 473.

B charged certain persons before a police officer with theft. Such charge was brought by the police to the notice of the Magistrate having jurisdiction, who directed the police to investigate into the truth of such charge. Having ascertained that such charge was false, such Magistrate took proceedings against *B* on a charge of making a false charge of an offence—an offence punishable under s. 211 of the Penal Code, and convicted him of that offence.

Held that, as such false charge was not preferred by *B* before such Magistrate, the offence of making it was not a contempt of such Magistrate's authority, and the provisions of ss. 468 and 473 of Act X of 1872 were inapplicable, and such Magistrate was not precluded from trying *B* himself, nor was his sanction or that of some superior Court necessary for *B*'s trial by another officer. *Empress v. Kashmiri Lal* (1) distinguished.

Observations by STUART, C. J., on the careless manner in which the charge in this case was framed.

THIS was an appeal by the Local Government against a judgment of Mr. M. S. Howell, Sessions Judge of Jaunpur, dated the 22nd May, 1880, acquitting on appeal one Baldeo charged with an offence under s. 211 of the Indian Penal Code. It appeared that Baldeo had on the 29th March, 1880, reported at a police-station that two persons named Raehpal and Sidhu had stolen certain property belonging to his master. The case was investigated, and the police officer who made the investigation reported that the charge made by Baldeo was false. The District Superintendent of Police, being of opinion that Baldeo had committed an offence punishable under s. 182 of the Indian Penal Code, directed that the matter should be laid before the Magistrate having jurisdiction in the matter, Mr. W. Lambe; who ordered the police to direct Baldeo to produce evidence of the theft within ten days, if he could do so. The police having reported that Baldeo had replied in answer to such direction that he had no charge to prefer and no evidence to produce, the Magistrate instituted proceedings against him, and charged him, under s. 211 of the

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Indian Penal Code, with making a false charge of theft. The Magistrate convicted him of this charge and sentenced him to rigorous imprisonment for three months. On appeal by Baldeo to the Court of Session it was contended on his behalf that the Magistrate was not competent to try him himself, regard being had to the provisions of s. 473 of Act X of 1872. The Sessions Judge, Mr. M. S. Howell, allowed this contention, and quashed Baldeo's conviction, for the following reasons:—"It seems to have been settled (I. L. R., 1 All., 625,) that s. 473, Criminal Procedure Code, is not limited merely to contempts under chapter X of the Indian Penal Code, but applies also to the offence of giving false evidence under s. 193, which belongs to chapter XI, and by parity of reasoning to s. 211, as Mr. Justice Pearson expressly states: it seems, therefore, that the Joint Magistrate could not try the appellant for making a false charge, which was intended to be brought, and was, indeed, actually brought, before his own Court, by means of the police report: I think that, if the Joint Magistrate had taken up the case under s. 182, on the authority of the District Superintendent's sanction, given under s. 467, Criminal Procedure Code, he would not have been debarred by s. 473, Criminal Procedure Code, from trying it; but he chose to take up the case under s. 211, for which the Superintendent could give no sanction, and for which the Joint Magistrate's own sanction, or that of some superior Court, was requisite, under s. 468, Criminal Procedure Code."

The Local Government appealed to the High Court from the Sessions Judge's judgment, on the ground that the Magistrate was not debarred by s. 473 of Act X of 1872 from trying Baldeo himself.

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

Babu Ram Das Chakarhati, for the respondent.

The following judgments were delivered by the Court:—

STUART, C. J.—This is an appeal by Government under s. 272, Criminal Procedure Code, against the judgment of the Sessions

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Judge of Jaunpur, setting aside the conviction and sentence by the Joint Magistrate in the case of one Baldeo Pathak, who was charged under s. 211 of the Indian Penal Code. That section provides: "Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished, &c." The police reported the case in the usual manner, and after hearing evidence on that report the Magistrate committed the case for trial, and afterwards tried the case himself. He was, in my opinion, quite competent to try the case, but not on such a commitment as he made, for he very irregularly and improperly committed the case in the following terms:—"I, Mr. Lambé, hereby charge you, Baldeo Pathak, as follows:—That you, on or about the 29th March, 187 (?), at the Baksha station, gave false information of the theft of *arhar* to the police against Kachpal Pathak and Sidhu Lohar, with intent to cause injury, and committed an offence: therefore you committed the offence which is punishable under s. 211 of the Indian Penal Code, and within the cognizance of the *Court of Session*: and I hereby direct that you be tried by the *said Court* on the said charge:" thus committing to the Court of the Judge, whereas the case was one clearly triable, and it was actually tried, by himself as a Magistrate of the first class. I have before me the original order of commitment in the vernacular, and it is correctly and indeed literally translated in the paper-book of this appeal, therefore neither the translator nor the printer are to blame, but the error must be laid to the door of those officially responsible for the state of the record, and I am afraid that it has been brought about by extreme carelessness either on the part of the Magistrate himself or of the officers to whom the duty of preparing the order of commitment was intrusted. The error, or careless irregularity as it may be called, was in utter disregard of the direction contained in No. (10), sch. iii of the Criminal Procedure Code, headed "Charges," and in which No. (10) there is the following direction:—"In cases tried by a Magistrate substitute 'within my cognizance' for 'within the cognizance of the Court of Session.' In (d) omit 'by the said

Court' ; "“(d)” here is evidently a misprint for (c), as there is no (d) in the schedule, and (c) evidently is intended. No objection, however, appears to have been taken to this irregularity, and the case was tried by the Magistrate properly and legally, so far as I consider, according to his powers, although without any order of commitment to himself. I have, however, considered it my duty to notice such carelessness in the preparation of orders of commitment in order that they may in future be avoided, not only by the Magistrate of Jaunpur, but by all Magistrates and Judges of Districts in these Provinces.

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The facts relied on by the prosecution were these:—On the 29th of March last, the accused, Baldeo, reported to the police at Baksha police-station, that at midnight of the previous day two persons named Sidhu and Rachpal had come into his master's field and broken or plucked some *arhar* stalks, and Baldeo, therefore, charged these men with theft, and requested that the case might be investigated. This investigation was taken in hand by a police officer named Ilahi Bakhsh, who, when examined before the Magistrate, stated that Baldeo was unable to produce any proof of his charge, which had, he said, been evidently trumped up by Baldeo, and he said that the motive for the false charge was hostility or “enmity” on the part of Baldeo, because he wanted to marry a sister of Rachpal, but had not been allowed. This state of the case was sufficiently supported at the trial before the Magistrate, and there was evidence also of an *alibi* in the case of Rachpal. The Magistrate, therefore, convicted Baldeo under s. 211, Indian Penal Code, and sentenced him to three months' rigorous imprisonment. On appeal to the Judge it was contended on behalf of the accused that what he had done at the police-station did not amount to a formal complaint to a Magistrate, and that a mere report to the police does not afford ground for a prosecution under s. 473, Criminal Procedure Code. This plea the Judge over-ruled, but he at the same time held, conformably with his understanding of the meaning of the Full Bench ruling in *Empress v. Kashmiri Lal* (1), that the Magistrate had no power to try the case.

(1) I. L. R., 1 All., 625.

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On both these points the Judge was clearly wrong. Baldeo's report to the police was not a formal complaint to a Magistrate, and was neither an offence committed before or against a Civil or Criminal Court. It was, therefore, such an offence as the Magistrate himself had full powers to try. As to the Full Bench case, I was myself one of the Judges who heard it, and I dissented from the opinions of my colleagues. But it must be allowed that the question there raised, as well as the question whether s. 211, Indian Penal Code, falls within the category of contempts within the meaning of the Indian Penal Code and the Code of Criminal Procedure, is attended with some difficulty, and chiefly in consequence of there being no definition in the Indian Penal Code or in the Criminal Procedure Code of the word "contempt." In England a contempt of Court has a precise and definitive meaning, by which it is restricted to offences not against the criminal law generally as these affect Courts of Justice, but to offences directly against the authority of the Courts themselves and their process, and of course such other offences as are declared by the statute to be contempts. Another difficulty is occasioned by the variety or rather want of identity of language in the Codes in regard to such questions as were raised in the Full Bench case, and also in regard to s. 211. Thus there is a whole chapter of the Penal Code, chapter X, which deals with the subject of "contempt of the lawful authority of public servants," in which apparently are included the process and orders of Courts of Justice, and neither s. 193 nor s. 211 are to be found within the provisions of that chapter. The offences contemplated by these sections, however, form part of chapter XI of the Penal Code entitled "of false evidence and offences against public justice," which it appears to me are not necessarily contempts. Another difficulty arises in the present case from the wording of s. 473 of the Criminal Procedure Code, which provides that, with certain exceptions, "no Court shall try any person for an offence committed in contempt of its own authority," and my honourable colleague, Mr. Justice Pearson, is of opinion that such an offence is covered by s. 463, which treats of "a complaint of an offence against public justice," which the offence defined by s. 211 of the Penal Code undoubtedly is, but

is it therefore an offence committed "in contempt of the lawful authority of a Court?" That I think may be doubted, although I say again such may have been the intention of the framers of the Criminal Procedure Code. The law on the subject is by no means clear, but in the present case we need not trouble ourselves with speculations respecting the meaning of these sections of the Penal Code and the Code of Criminal Procedure, seeing that Baldeo's offence against s. 211 of the Penal Code was not such as is provided against by s. 473, seeing it was neither committed in contempt of nor before or against a Civil or Criminal Court. The offence was, therefore, triable by the Magistrate himself without any sanction and in virtue of his own powers. The present appeal must, therefore, be allowed, the judgment of the Judge reversed, and the conviction and sentence by the Joint Magistrate (in support of which there appears to be, as I have already stated, ample evidence) restored.

PEARSON, J.—My judgment, dated 22nd August, 1877, in the case of *Empress v. Kashmiri Lal* (1), which came before the Full Bench, recognizes the offence described in s. 211, Indian Penal Code, as a contempt of Court, when committed before or against a Civil or Criminal Court, in reference to and in accordance with the provisions of ss. 468 and 473, Act X of 1872. But in the case brought before us by the present appeal the offence under the aforesaid section of which Baldeo had been convicted was not committed before or against a Civil or Criminal Court, but at the Daksha police-station. The false charge of theft was made to Kudrat-ul-lah, assistant clerk at that station, and was never preferred by Baldeo in the Joint Magistrate's Court. This being so, I am of opinion that the provisions of ss. 468 and 473, Act X of 1872, are inapplicable, and that the Sessions Judge has erred in ruling that the Joint Magistrate could not try the case himself or that his sanction or that of some superior Court was necessary to its trial by another officer. I would, therefore, allow the appeal, reverse the Sessions Judge's order, and restore the finding and sentence of the Joint Magistrate.

Appeal allowed.

(1) I. L. R., I All., 625.