

Court, and decreeing this appeal remand the case to that Court, for disposal *de novo* with reference to the observations which we have made. The costs of this appeal will abide the result.

Cause remanded.

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HOTI LAL
v
HARDEO.

CRIMINAL REVISIONAL.

1882
September 25.

Before Mr. Justice Mahmood.

EMPRESS OF INDIA *v.* PITAM RAI.

False charge—Act XLV of 1860 (Penal Code), s. 211.

The actual institution of criminal proceedings on a false charge is essential to the application of the latter part of s. 211 of the Indian Penal Code, and if a person only makes a false charge, his case falls under the first part of the section irrespective of the fact that the false charge relates to "an offence punishable with death, transportation for life, or imprisonment for seven years or upwards."

THIS was a reference to the High Court by Mr. H. F. Evans, Officiating Sessions Judge of Bareilly, under s. 296 of the Criminal Procedure Code, 1872. It appeared from the Sessions Judge's referring letter that one Pitam Rai had been charged before a Magistrate with, and convicted of, having brought a false charge against one Parme, and punished under the first part of s. 211 of the Indian Penal Code. The Sessions Judge, being of opinion that the false charge related to an offence punishable with imprisonment for seven years, and that consequently the Magistrate was not competent to try Pitam Rai, but should have committed him for trial before the Court of Session under the latter part of s. 211, reported the case to the High Court for orders. It appeared from the record of the case that Pitam Rai had preferred the charge in question to a police officer, and that criminal proceedings had not been instituted against Parme in consequence of such charge.

Mr. Hill, for Pitam Rai, contended that, as criminal proceedings had not been instituted against Parme on the false charge made against him by Pitam Rai, the latter had not committed the offence punishable under the latter part of s. 211, and the case was therefore triable by the Magistrate.

MAHMOOD, J.—This reference relates only to the case of Pitam Rai, the appeal of the other prisoner, Gauri, having been disposed

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of by the Sessions Judge. The learned Judge is of opinion that "the false charge made by Pitam was that Parme had committed by night theft in a building used for the protection of property, an offence punishable either under s. 380 or s. 457, Indian Penal Code, with seven years' imprisonment, and that he should therefore have been committed for trial by the Court of Session under the latter part of s. 211, Indian Penal Code." I am of opinion that the view of the learned Judge is only partially right. The false charge brought by the prisoner against Parme no doubt related to an offence punishable with "imprisonment for seven years or upwards" within the meaning of the latter part of s. 211, Indian Penal Code. But that section is divided into two distinct parts. The first part relates to two matters, (i) *institution* of false criminal proceedings, (ii) *falsely charging* any person with having committed an offence. All cases of false criminal proceedings and of false charges fall under the first part of the section, except those specified in the second part of the section. The purview of the second part of the section is, however, limited to *institution* of criminal proceedings on a false charge, and does not include the making of a false charge which falls short of the institution of criminal proceedings. Penal statutes must be strictly construed, and on consideration of the language of s. 211, Indian Penal Code, I am of opinion that the latter part of that section has no reference to false charges, but to cases in which such false charge is followed by, and is made the basis of, the institution of criminal proceedings. The language of the statute is:—"If such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, &c., &c." These words, compared with the phraseology of the first part of the section, leave no doubt on my mind that the *actual institution* of criminal proceedings on a false charge is essential to the application of the latter part of s. 211, Indian Penal Code, and that if the offence of the accused stops at making a false charge, his case falls under the first part of the section irrespective of the fact that the false charge relates to "an offence punishable with death, transportation for life, or imprisonment for seven years or upwards."

In the present case it is clear that the offence of which the prisoner, Pitam Rai, has been convicted consisted only of making a false charge. He instituted no criminal proceedings on such false charge. The case therefore was triable by the Magistrate, and there was no necessity for a commitment to the Court of Session.

These observations dispose of the only legal point referred to by the Sessions Judge. On the merits of the case I do not wish to express any opinion. The case will go back to the Sessions Judge for disposal according to law.

APPELLATE CRIMINAL.

Before Mr. Justice Mahmood.

EMPRESS OF INDIA v. FATEH AND ANOTHER.

Forgery—Using a “forged” document—Using “false” evidence—“Dishonestly”—“Fraudulently”—Correction of mistake in document—Act XLV of 1860 (Penal Code), ss. 24, 25, 196, 464, 470 471—Further inquiry by Appellate Court—Act X. of 1872 (Criminal Procedure Code), s. 232.

The vendees of a plot of land altered the number by which the land was described in the deed of sale, doing so because such number was not the right number. Having made this alteration they used the deed of sale as evidence in a suit. *Held* that the alteration of the deed did not amount to “forgery” within the meaning of s. 463 of the Indian Penal Code, nor could the deed after the alteration be designated a “forged document” as contemplated by s. 470, the intention to cause wrongful loss or wrongful gain or to defraud being wanting; nor could it be said that in using the deed, the vendees were “dishonestly” or “fraudulently” using as genuine a “forged document,” and therefore the use by the vendees of the deed did not constitute an offence under s. 471 of the Indian Penal Code. Further, that their use of it did not render them liable to conviction under s. 196 of that Code.

Observations as to the exercise by an Appellate Court of the powers conferred on it by s. 232 of Act X. of 1872 (Criminal Procedure Code).

THIS was an appeal from a judgment of conviction of Mr. H. G. Keene, Sessions Judge of Saharanpur, dated the 10th July, 1882. The facts of the case are sufficiently stated in the judgment of the High Court.

Mr. Carapiet, for the appellants.

The Senior Government Pleader (Lala Jwala Prasad), for the Crown.

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October 2.
