

1882
July 5.

REVISIONAL CRIMINAL.

Before Mr. Justice Straight.

EMPRESS OF INDIA *v.* RADHA KISHAN AND ANOTHER.

Act XLV of 1860 (Penal Code), ss. 182, 211—Prosecution under s. 182—Complaint—Rejection with reference to police-report.

K made a report at a police-station accusing *R* of a certain offence. The police having reported to the Magistrate having jurisdiction in the matter that in their opinion the offence was not established, the Magistrate ordered the case to be "shelved." *K* then preferred a complaint to the Magistrate again accusing *R* of the offence. The Magistrate rejected the complaint with reference to the police-report. Subsequently *R*, with the sanction of the police authorities, instituted criminal proceedings against *K*, under s. 182 of the Penal Code, in respect of the report which he had made at the police station, and *K* was convicted under that section.

Held that, before proceeding against *K*, the Magistrate should have fully investigated and sifted his complaint for himself, and should not have abrogated the functions imposed on him by law, because the police had reported against the entertainment of the case. The views expressed in *The Government v. Karindad* (1) concurred in.

Held also that *K*'s conviction under s. 182 of the Penal Code was illegal, as the Magistrate had no power to entertain a complaint under that section at the instance of *R*, the application of s. 182 and the institution of prosecutions under it being limited to the public servant against whom the offence has been committed or to his official superior, as mentioned in s. 467 of Act X of 1872, and it not being intended that those provisions should be enforced at the instance of private persons. Moreover, if *K*'s complaint was false, his offence was against *R*, and not against the public servant to whom the complaint was made, and fell within s. 211 of the Penal Code.

Ordered that the complaint made by *K* should be investigated.

THIS was a case reported to the High Court for orders under s. 296 of Act X of 1872 by Mr. C. W. P. Watts, Sessions Judge of Agra. It appeared that one Radha Kishan complained at a police station (thanah) that one Rup Ram and one Nand Lal had stolen certain cattle belonging to him out of the shed in which they were kept. The Magistrate before whom the police report of the case came, by an order dated the 29th January, 1882, directed that the case should be "shelved," because the report stated that in the opinion of the police the offence of which Radha Kishan accused Rup Ram and Nand Lal was not established. On the 4th February, 1882, Radha Kishan preferred a complaint in the matter

(1) I. L. R., 6 Calc. 496.

which came before Pandit Kidar Nath, Magistrate of the first class. In his petition he stated as follows:—"The darogha (head-constable) came to the village, and went to the house of the accused: after making an inquiry he arrested them and took them to the thanah, but let them off subsequently and told the petitioner that he would take up the inquiry again. But no inquiry was made, nor were the accused "challaned" in this case: the petitioner heard that some report had been sent up to the Court; and he therefore prays that inquiry may be made in his case."

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No proceedings were taken in respect of this complaint, but it was subsequently filed in the case instituted by Rup Ram against Radha Kishan which will be presently mentioned. On the 7th February, 1882, Rup Ram applied to the District Superintendent of Police for sanction to prosecute Radha Kishan and one Maya Ram, a chaukidar, who it was alleged had aided and abetted him, for offences under ss. 182 and 211 of the Indian Penal Code; and such sanction was granted. On the 11th February, 1882, Rup Ram preferred a complaint to Pandit Kidar Nath accusing Radha Kishan and Maya Ram of offences under ss. 182 and 211 of the Indian Penal Code. On the same day Radha Kishan preferred a second complaint to the same Magistrate in which he accused Rup Ram and Nand Lal of having stolen his cattle, and prayed for an inquiry into the charge. The Magistrate, by an order dated the 27th February, rejected this complaint on the ground that he could not take any steps in the matter as the case had been shelved on the 29th January, 1882, and Rup Ram had obtained sanction to prosecute the complainant. The Magistrate subsequently summarily tried Radha Kishan and Maya Ram for the offence under s. 182 of the Indian Penal Code of which they were accused by Rup Ram, and convicted them of that offence by an order dated the 11th April, 1882. The Sessions Judge, having called for the record of the case, on the application of Radha Kishan and Maya Ram, came to the opinion that the proceedings of the Magistrate were contrary to law for the following reasons:—

"By a ruling of the High Court—*Queen v. Hurree Ram* (1)—it is laid down very clearly that s. 182 is an offence against the public

(1) N.-W. P. H. C. Rep., 1871, p. 194.

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servant, not against the person complained of..... the offence which Radha Kishan committed (if his report was false) was one under s. 211, and was against Nand Lal and Rup Ram—not under s. 182: Maya Ram the chaukidar does not seem to have committed any offence at all; for though he went to the thauah with Radha Kishan, he made no report; and it was not till the police went to the spot that he, Maya Ram, made any statement at all in the matter: there can be no doubt that the appellants have been prejudiced by the trial being held under s. 182, and not under s. 211, for in the latter case a summary trial could not have been held, and the evidence would have had to be recorded at length: moreover, Radha Kishan was never allowed an opportunity of proving that his complaint was true, not false; he gave in a petition praying for this on the 4th February, 1882, but it was ultimately “filed” in this very case against himself and Maya Ram, and no inquiry was made: there is a ruling on this very point of the Calcutta High Court (1) in which Garth, C. J., and Field, J., ruled that such opportunity should always be given, if a man claimed it, before he was put on his trial under s. 211, and that he should be allowed to establish his case (if he could) before a Magistrate, and not before the police..... altogether, I think that the Magistrate has failed to recognize the true legal aspect of the case, and I think that his conviction is contrary to law, and to justice also.”

STRAIGHT, J.—I am very clearly of opinion that the order of the Magistrate is open to the objections mentioned in the referring letter of the Judge, and that the conviction of Radha Kishan and Maya Ram must be set aside. The Deputy Magistrate should not have shelved the petition of complaint of Radha Kishan, because the police had not sent the matter up for want of proof, but should have inquired into it himself for the purpose of determining whether process should or should not issue against Nand Lal and Rup Ram. Had Radha Kishan, after the police had refused to take any action on his petition of 21st January, 1882, refrained from adopting any further steps, and so indicated that he had dropped the matter, a prosecution for making a false charge under s. 211 of the Penal Code might with propriety have been instituted. But when by his petition of the 4th, followed by that of the 11th Feb-

(1) L. L. R. 6 Calc. 496.

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ruary, he showed his intention to persevere in and proceed with his charges against Nand Lal and Rup Ram, the Magistrate should have fully investigated and sifted the complaint for himself, and should not have abrogated the functions imposed upon him by law, because the police had reported against the entertainment of the case. The duties of the police are one thing, those of the Magistrates another, and the latter have no right to allow the former to intrude upon their proper province. I entirely concur in the views expressed by Garth, C. J., and Field, J. in the matter of *Karimdad* (1), a case very similar to the present.

But the Magistrate's procedure in the matter more immediately before me, namely the charge against Radha Kishan and Maya Ram, is open to the obvious objection, that he had no power to entertain a complaint under s. 182 of the Penal Code at the instance of Rup Ram. The application of s. 182 and the institution of prosecutions for offences under it are in my opinion limited to the public servant against whom the offence has been committed or to his "official superior" as mentioned in 467 of the *Criminal Procedure Code*, and it was not intended that these provisions should be enforced at the instance of private persons. For if the complaint made by Radha Kishan was false, his offence was against Rup Ram and not against the public servant to whom it was made, and his crime fell within s. 211 of the Penal Code. The order of the Magistrate of the 11th April last must be set aside and the sentences passed thereby quashed. It is further ordered, that the Magistrate of Agra do investigate according to law the complaints preferred by Radha Kishan on the 4th and 11th February, 1882, and do dispose of them as to him seems fit. If he comes to the conclusion that there is no sufficient ground for proceeding, he will dismiss the complaint, and if he consider it necessary sanction a prosecution of Radha Kishan, and of Maya Ram, if there is any evidence of his having made a charge against Rup Ram, under s. 211 of the Penal Code. Of course such charge must be heard before another Magistrate, who will determine whether there should be a committal to the Sessions or he should convict or acquit. When the matter has been finally closed the records will be forwarded to the Court for examination.