

1926.

BENGALI
GOPE
v.
KING-
EMPEROR.

In my opinion these proceedings were void ab initio; and there is no basis in law for the present prosecution. I would therefore quash the commitment under section 213 of the Code and direct that the petitioner be discharged.

KULWANT SAHAY, J.—I agree.

Commitment quashed.

REVISIONAL CRIMINAL.

Before Ross and Kulwant Sahay, J.J.

1926.

Jan., 27.

AMBIKA SINGH

v.

KING-EMPEROR.*

Code of Criminal Procedure, 1898 (Act V of 1898), section 195, non-compliance with—illegality—Penal Code, 1860 (Act XLV of 1860), section 211, prosecution under—enquiry by magistrate who dismissed the complaint.

Under section 195(i)(b) of the Code of Criminal Procedure, 1898. "No court shall take cognizance of any offence punishable under.....section 211 (Penal Code), when such offence is committed in, or in relation to, any proceeding in any court, except on the complaint in writing of such court, or of some other court to which such court is subordinate". *Held*, that when a false complaint is made to a magistrate and the complainant is proceeded against under section 211, Penal Code, with respect to the complaint, the magistrate to whom the complaint was made is not himself competent to inquire into the offence under section 211, Penal Code.

The facts of the case material to this report are stated in the judgment of Kulwant Sahay, J.

S. M. Naim, for the petitioner.

H. L. Nandkeolyar, Assistant Government Advocate, for the Crown.

KULWANT SAHAY, J.—The petitioner lodged a first information before the police at Ghosi on the 12th

* Criminal Revision no. 526 of 1925 from an order of Mr. P. N. Mazumdar, Magistrate, First Class, Patna, dated the 29th October, 1925.

of July, 1925, charging certain persons with an offence under section 302 of the Indian Penal Code. Before the police submitted a report, the petitioner filed a petition before the Subdivisional Magistrate of Jehanabad on the 17th of July, 1925, praying for a local enquiry into the case by the Subdivisional Officer. The Subdivisional Magistrate treated this application as a complaint and proceeded to examine the petitioner on oath. In the meantime the police submitted a final report stating that the case was a false one and prayed for the prosecution of the petitioner under section 211 of the Indian Penal Code. On the 13th of August, 1925, the Subdivisional Magistrate, after receipt of the police report, summoned the petitioner under section 182 of the Indian Penal Code and treated the complaint of the petitioner as a counter case which he proposed to take up after the disposal of the case under section 182. On the 24th of August, 1925, the petitioner prayed that he should be given an opportunity of proving his case before he was tried for an offence under section 182; but the learned Subdivisional Magistrate rejected the application, and also dismissed the petition of complaint under section 203 of the Code of Criminal Procedure. On the 21st of September, 1925, the learned Subdivisional Magistrate converted the trial of the petitioner under section 182 into an enquiry before commitment for an offence under section 211 read with section 302 of the Indian Penal Code, and he has committed the petitioner to the sessions court for trial.

It is clear that the proceedings in this case have been without jurisdiction. The Subdivisional Magistrate could not himself enquire into the case under section 211 read with section 302, Indian Penal Code. The proper procedure to adopt was to make a complaint under section 195 of the Code of Criminal Procedure. The provisions of section 195 not having been complied with, the order of commitment is clearly without jurisdiction and must be set aside and the commitment quashed.

Ross, J.—I agree.

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KULWANT
SAHAY, J.