

rateably distributed between the claimants money-decree-holders; and where all or any of the assets liable to be rateably distributed under this section are paid to a person not entitled to receive the same, any person so entitled may sue such person to compel him to refund the assets. It appears to me therefore that the remedy indicated in the second clause of section 73 is the only remedy. "The expression of one thing is the exclusion of the other."

It was urged that the matter really was under section 47, but it seems to me that the Privy Council decision must be deferred to, and this matter must be regarded as a purely ministerial act which has no element of a judicial decision.

I would therefore dismiss this appeal without costs and the Civil Revision is also dismissed.

DAS, J.—I agree.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Ross and Kulwant Sahay, J.J.

BENGALI GOPE

v.

KING-EMPEROR.*

1926.

Jan., 27.

Code of Criminal Procedure, 1898 (Act V of 1898), sections 37, 190 and 529—Authorization of magistrate with second class powers to entertain complaints, effect of—Complaint of murder, whether magistrate may entertain—prosecution for false complaint of which cognizance is taken without authority—section 529(e), effect of.

Section 190(2), Code of Criminal Procedure, provides :
 ".....the District Magistrate.....may empower any magistrate to take cognizance under sub-section (1),

* Criminal Revision no. 480 of 1925, from an order of P. Mazumdar, Esq., Magistrate, First Class, Patna, dated the 11th of May, 1925.

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clause (a) or (b), of offences for which he may try or commit for trial". Sub-section (1) provides: ".....any other magistrate specially empowered in this behalf may take cognizance of any offence.....(a) upon receiving a complaint of facts which constitute such offence; (b) upon a report in writing of such facts made by any police officer". By virtue of the powers conferred by section 190(2) the District Magistrate of Patna authorized the Sub-Deputy Magistrate of Dinapur, a magistrate with second class powers, to entertain complaints during the absence of the Subdivisional Magistrate. A complaint having been made before the Sub-Deputy Magistrate of an offence of murder, he sent it to the police for enquiry. The police reported the case to be false and the magistrate dismissed the complaint under section 203, and then himself made a complaint against the complainant, who was committed to the Court of Session for trial under section 211, Penal Code.

Held, that section 37 and the Fourth Schedule of the Code must be read with section 190 and, therefore, under section 190(2) the District Magistrate can confer upon a subordinate magistrate power to take cognizance of only such offences as such subordinate magistrate is empowered by the Fourth Schedule to try or commit for trial. Consequently the subordinate magistrate in the present case was not competent to entertain the complaint made to him.

Under section 529(e), if any magistrate not empowered by law to take cognizance of an offence under section 190, sub-section (1), clause (a) or (b), erroneously in good faith takes such cognizance, his proceedings cannot be set aside merely on the ground of his not being so empowered. *Held*, however, that where a magistrate not empowered to take cognizance of an offence, does so, the complainant is not liable to be prosecuted in respect of the complaint if it proves to be false.

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

G. P. Das, for the petitioner.

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

Ross, J.—The petitioner has been committed to the court of session for trial on a charge of having

presented a false complaint before the Sub-Deputy Magistrate of Dinapur. The offence alleged in the complaint was the offence of murder.

The contention on behalf of the petitioner is that the Sub-Deputy Magistrate, who exercised second class powers only, had no authority to take cognizance of the complaint; and that all the proceedings before him were without jurisdiction.

It appears that by an order of the District Magistrate of Patna the Sub-Deputy Magistrate of Dinapur is authorized to entertain complaints during the absence of the Subdivisional Magistrate. The power to make such an order is conferred by section 190, clause (2), and is exerciseable with regard to cases which the Subordinate Magistrate is competent to try or to commit for trial. Section 37 and the Fourth Schedule of the Code, which also deal with this matter, must be read with section 190; and there is nothing in these provisions to extend the powers which the District Magistrate can confer. As the complaint made to the Sub-Deputy Magistrate was a complaint that certain persons were guilty of murder, he was not competent to take cognizance of it; and the proper procedure for him to adopt was that laid down in section 201 which requires him to return the complaint for presentation to the proper court with an endorsement to that effect. Instead of doing that he sent the complaint to the police for enquiry and, on their reporting the case to be false, he dismissed the complaint under section 203 without ever having examined the complainant on oath, and then himself complained against him. The orders were throughout irregular and without jurisdiction. Nor are they protected by section 529(e). That section saves proceedings before a magistrate taken on a complaint of which cognizance is taken without authority; but this will not have the effect of making the complainant liable for prosecution for a false complaint by reason of the magistrate's having taken cognizance of it, without power to do so.

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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.