observations of the same judge in *Emperor* v. *Bankatram Lachiram*(1) and *In re. Mahomed Ali*(2) as to the spirit which should guide the Courts in the exercise of their discretionary powers in revision. The result may in practice not differ greatly from that which would be obtained by laying down and following detailed rules. Doubtless the Court will only interfere in revision with an acquittal in an exceptional case. But the supreme consideration is that the Court should exercise its discretion untrammelled in each case as it arises.

REVISIONAL CRIMINAL.

Before Mullick and Jwala Prasad, J.J.

DAROGA GOPE

v.

KING-EMPEROR.*

1925.

June, 15.

Code of Criminal Procedure, 1898 (*Act V of* 1898), *section* 195(b)—*Offence in relation to judicial proceeding, nature of*—*Indian Penal Code*, 1860 (*Act XLV of* 1860), *sections* 211 *and* 182.

If two offences are even remotely connected by the relationship of cause and effect, the first may be said to have been committed "in relation" to the second within the meaning of section 195.

Where, therefore, the petitioner laid a false charge before the police which caused the police to submit a report against the petitioner, which in its turn caused the petitioner to institute a judicial proceeding before the Magistrate by lodging a formal complaint and repeating the allegations made in his information to the police, and the Magistrate, on the

* Criminal Revision no. 143 of 1925, from an order of J. A. Sweeney, Esq., I.C.S., Sessions Judge of Patna, dated the 13th March, 1925, affirming an order of A. Haque, Esq., Subdivisional Magistrate of Patna, dated the 6th February, 1925.

(1) (1904) I. L. R. 28 Bom. 533. (2) (1914) I. L. R. 41 Cal. 466.

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written complaint of the sub-inspector of police, summoned the petitioner under sections 211/182, Indian Penal Code. *Held*, that the laying of the false information before the police was an offence committed in relation to a judicial proceeding and the Magistrate had no jurisdiction to summon the petitioner under section 211, Indian Penal Code, without a complaint being made in writing by the Court under clause (*b*) of section 195, Criminal Procedure Code.

Emperor v. *Hardwar Pal*(1), *Brown* v. *Ananda Lal Mullick*(2), *K. Parameswaran Nambudri, In re.*(3) and *Shaikh Mohammad Yassin* v. *King-Emperor*(4), followed.

Jagat Chandra Mozumdar v. *Queen-Empress*(5), distinguished.

An offence under section 211 must always include an offence under section 182 and the court is competent to proceed and convict for the minor offence under section 182 even though the major offence under section 211 has been committed.

Bholtaram v. *Heera Kolita*(6), followed.

Empress v. *Arjun* (7) and *Giridhari Naik* v. *Empress*(8), not followed.

Karim Buksh v. *The Queen Empress*(9), and *Raghavendra* v. *Kashinath Bhat*(10), referred to.

A false charge made to the police is not necessarily an offence under section 211, Penal Code: if the intention to injure the person charged is absent, the offence falls under section 182.

(1) (1912) I. L. R. 34 All. 522.
(2) (1917) I. L. R. 44 Cal. 650.
(3) (1916) I. L. R. 39 Mad. 677.
(4) (1925) I. L. R. 4 Pat. 323.
(5) (1899) I. L. R. 26 Cal. 786.
(6) (1880) L. L. R. 5 Cal. 184.
(7) (1883) I. L. R. 7 Bom. 184.
(8) (1900-01) 5 Cal. W. N. 727.
(9) (1890) I. L. R. 17 Cal. 574, F. B
(10) (1895) I. L. R. 19 Bom. 717.

On the 5th January, 1925, the petitioner, Daroga Gope, laid an information before the police complaining that his landlord Bajrangi Singh and others had forcibly carried off 9 maunds of paddy from his house because he had refused the landlord's request for the customary gift of milk and curds. Previous to this, on the same day, a counter information had been lodged before the police by the landlord against the petitioner charging him and his brothers with wrongfully seizing and confining the landlord's ploughman while the latter was passing the petitioner's house. It was alleged that previously there had been a quarrel between the petitioner's party and the zamindar's servants about the sowing of some paddy and that the zamindar's servant was seized in order to annoy the zamindar.

The police investigated both cases and reported that the zamindar's complaint was true and the petitioner's complaint was false. The zamindar's information, which was numbered by the police as case no. 1 of 1925, ended in the conviction of the petitioner and was under appeal at the time when the present application was disposed of.

On the 15th January the officer who investigated into the petitioner's information, submitted his final report declaring it to be false and on the 3rd February, under the orders of the Inspector, he submitted formal complaint to the Subdivisional Magistrate of Patna charging the petitioner with offences under sections 182 and 211, Penal Code. In the meantime, on the 23rd January, the petitioner, finding that the police had reported his case to be false, filed a formal complaint before the Subdivisional Magistrate repeating the allegations made in his information to the police, and on the 6th February, 1925, the Subdivisional Magistrate, after perusing the police report above referred to, dismissed the complaint under section 203, Code of Criminal Procedure. On the

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same day he passed the following order on the Sub-Inspector's written complaint of the 3rd February:

"Summon Daroga Gope under sections 211/182, I. P. C., for 24-2-25."

N. C. Ghosh, for the petitioner.

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

MULLICK, J.—We are asked in revision to set aside an order summoning the petitioner to stand his trial under sections 211 and 182, Penal Code, on the ground that the prosecution of the petitioner cannot proceed without the written complaint of the Magistrate who took cognizance of the petitioner's complaint of the 25th January.

Now clause (*b*) of section 195 of the Criminal Procedure Code directs that no Court shall take cognizance of any offence punishable under the following sections of the Code, namely, sections 193, 194, 195, 196, 200, 205, 206, 207, 208, 209, 210, 211, and 228, when such offence is alleged to have been 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. In the present case the recording of the complaint of the 25th January was a judicial proceeding, and the first question is whether laying a false information before the police on the 5th January was an offence committed in, or in relation to, the complaint which was lodged by the petitioner before the Subdivisional Magistrate on the 25th January.

Admittedly the offence was not committed in the judicial proceeding. But was it committed "in relation" to it? This raises a point upon which there has been some diversity of opinion, but the tendency seems to be to give the words of section 195(*b*) as wide an application as possible. It is clear that some of the offences enumerated in the clause are capable of being committed in relation to a judicial proceeding which did not exist. False evidence, for instance, may

be fabricated for a contemplated suit or property may be fraudulently concealed in contemplation of an execution proceeding. The clause applies if the judicial proceeding is in existence at the time when it is sought to prosecute the offender for the offence in question.

With regard to a false information to the police, it may be argued that the offence is a contempt which cannot possibly be said to have been committed " in relation to " any subsequent contempt, each repetition being a separate independent and complete act On the other hand if two offences are even remotely connected by the relationship of cause and effect, then the first may be said to have been committed in relation to the second. It may be that the commission of the latter offence may never have been intended, but if it is in fact the consequence of the former offence then section 195 applies. Here it may be said that the laying of the false charge on the 5th January caused the police to submit a report against the petitioner which in its turn caused the petitioner to institute a judicial proceeding before the Subdivisional Magistrate by lodging the complaint of the 25th January and that therefore the offence of the 5th January was committed in relation to a judicial proceeding. This was the line of reasoning in *Emperor* v. *Hardwar Pal*(1). On the other hand, in *Jagat Chandra Mozumdar* v. *Queen Empress*(2), the offenec of fabrication of false evidence was said to have been committed by a police officer in the course of an investigation; but it does not appear that any judicial proceeding followed as a result of that investigation and therefore it was held that no sanction under the Criminal Procedure Code of 1898 was required. In *F. A. Brown* v. *Ananda Lal Mullick*(3), a charge of theft was laid before the police and was followed up by a complaint in Court upon which process was issued and a trial held. After his discharge in this trial the

(1) (1912) I. L. R. 34 All. 522. (2) (1899) I. L. R. 26 Cal. 786.
(3) (1917) I. L. R. 44 Cal. 650.

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accused sought to prosecute the complainant for laying a false charge before the police and it was held that this could not be done without a complaint under clause (*b*) of section 195 from the Court which discharged the accused. In *Re K. Parneswaran Nambudri*(1), the difference betwen clause (*c*) and clause (*b*) of section 195 was pointed out and it was held that clause (*b*) was applicable in a case where the offence of fabricating false evidence was committed in respect of a promissory note before the institution of a civil suit for its enforcement, and where the application to prosecute the offender under section 193, Penal Code, was made after the institution of such suit. In *Shaikh Muhammad Yassin* v. *King Emperor*(2), a complaint was lodged before the Magistrate after the police had reported the information lodged by him to be false. It was sought to prosecute the complainant for laying a false charge before the police without a complaint in writing by the Magistrate who took cognizance of the complaint. It was held that section 195 applied.

I think, therefore, that in the present case the order of the Subdivisional Magistrate of the 3rd February summoning the petitioner under section 211, Penal Code, was without jurisdiction on the ground that the offence was committed in relation to a judicial proceeding instituted before the Subdivisional Magistrate on the 25th January and that the complaint in writing of the Court was necessary under clause (*b*) of section 195.

The next question is whether, even if the proceedings in respect of section 211 are bad, a prosecution under section 182 can continue. On this point it is urged on behalf of the petitioner that if the offence of the 5th January was one falling under section 211, the Magistrate cannot split up the offence so as to give himself jurisdiction.

(1) (1916) I. L. R. 39 Mad. 677. (2) (1925) I. L. R. 4 Pat. 323.

It is true that the Bombay High Court has taken this view in *Empress* v. *Arjun*(1); but the Calcutta High Court, in *Bhokteram* v. *Heera Kolita*(2) has held that it is open to the Court to convict under the minor offence under section 182, even though the major offence under section 211 has been committed. It is clear that an offence under section 211 must always include an offence under section 182 and I do not see why the Court should not convict of the minor offence if it so chooses. Reliance is placed by the learned Vakil for the petitioner on *Giridhari Naik* v. *Empress*(3). In that case it was held that a false charge of theft having been laid before the police there should be a prosecution under section 211 and not under section 182. The decision purports to have been based on *Karim Bukŝh* v. *Queen Empress*(4), but with the greatest respect it does not appear that the Full Bench in that case laid down any such proposition. What the Full Bench decided was that a person who sets the criminal law in motion by making a false charge to the police of a cognizable offence institutes criminal proceedings within the meaning of section 211 of the Penal Code. The difference between an offence under section 182, and an offence under section 211 was noticed in *Raghavendra* v. *Kashinath Bhat*(5). Every false charge made to the police is not necessarily an offence under section 211. If the intention to injure is absent, then the offence falls under section 182 and there is no reason why, if the prosecutor is unable or unwilling to prove intention, that is to say malice, he should not be permitted to take a conviction under section 182.

In the present case therefore although the Sub-divisional Magistrate will have no jurisdiction to take cognizance of the offence under section 211, he will be competent to investigate the complaint as regards

(1) (1883) I. L. R. 7 Bom. 184.
(2) (1880) I. L. R. 5 Cal. 184.
(3) (1900-01) 5 Cal. W. N. 727.
(4) (1890) I. L. R. 17 Cal. 574.
(5) (1895) I. L. R. 19 Bom. 717.

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section 182 which does not require the complaint in writing of the Magistrate who took cognizance of the complaint of the 25th January.

It appears, however, that the petitioner has already been convicted in the counter case and the necessity for prosecuting him for making a false charge is not clear. If the appeal Court maintains the sentence of imprisonment which we learn has been passed upon the petitioner, there is little object in punishing him again for giving false information to the police.

MULLICK, J.

The application in revision is dismissed.

JWALA PRASAD, J.—I agree.

APPELLATE CIVIL.

Before Bucknill and Macpherson, J.J.

1925.

June, 16.

SRIMATI PEARI DAI DEBITORS

v.

NAIMISH CHANDRA MITRA.*

Registration Act, 1908, (*Act XVI of* 1908), *section* 17 *and* 49—*Lease of immoveable property for five years*—parwana *not registered, admissibility of—induction of lessee—part-performance.*

A written application or proposal was made by the naib to the proprietors stating that he had the opportunity of effecting a lease on favourable terms with certain persons for five years. The proposal contained certain suggestions with regard to the proposed lease and the naib asked for orders. An order was passed by the proprietors on this application to the effect that, "Naib will do the needful". This was followed later by a formal letter from the proprietors to the naib definitely accepting the offer and telling him to issue a

* Appeal from Appellate Decree no. 1372 of 1922 from a decision of Pandit Ram Chandra Chaudhuri, Subordinate Judge of Bhagalpur, dated the 15th July, 1922, reversing a decision of B. Radha Krishna Prasad, Munsif of Bhagalpur, dated the 22nd April, 1921.