APPELLATE CRIMINAL.

Before Allanson, J.

(On a difference of opinion between Adami and Wort, JJ.)

KING-EMPEROR

v.

LACHMAN SINGH.*

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April, 2, 18.

Penal Code, 1860 (Act XLV of 1860), section 182—gives information," whether confined to voluntary information—intention—motor driver, without licence giving fictitious name to police officer.

The information referred to in section 182 of the Penal Code may be either information which is volunteered or information given in answer to a question.

Bishwanath Singh v. *Emperor* (1), and *Queen Empress* v. *Ramji Sajabarao* (2), followed.

Per *Adami*, J. (*Allanson* J., concurring). The intention contemplated by clause (*a*) of section 182 does not depend upon what is done or omitted to be done by the public servant

*Government Appeal no. 2 of 1928, from a decision of Mr. Badiruddin Ahmed, Deputy Magistrate, 2nd Class, Gaya, dated the 15th October, 1927.

(1) (1927) 104 Ind. Cas. 712. (2) (1886) I. L. R. 10 Bom. 124.

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on the false information given to him, but upon what was, from the facts, the reasonable intention to be inferred on the part of the informant.

Queen Empress v. *Budh Sen* (1), followed.

Where the driver of a motor vehicle who had no license with him, on being asked his name by a public officer, gives a fictitious name, held by *Allanson* J., agreeing with *Adami*, J., (*Wort*, J., contra) that he had committed an offence under section 182.

Queen Empress v. *Ganesh Khanderao* (2), referred to.

Per *Wort*, J.—The word "omit" in section 182 indicates an operation on the mind of the officer which has a result of making that officer give up a purpose which he otherwise would have pursued. It does not indicate placing an obstacle in the way of the officer performing his duty and thus preventing or making it more difficult for him to carry out an intention which was in his mind.

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

Sultan Ahmed, Government Advocate, for the Crown.

B. C. De, for the prisoner.

2nd April, 1928.

ADAMI, J.—This is an appeal by the Crown against the order of a Deputy Magistrate, with second class powers, at Gaya, acquitting Lachman Singh of an offence punishable under section 182 of the Penal Code.

According to the prosecution case, on the evening of the 28th of June, 1927, the Superintendent of Police, Gaya, saw an overloaded motor car, bearing the number 386-H on the Sherghati road. When he came up to the car, which was then standing, he made inquiry as to which of the persons travelling in it was the driver. He was told that a man who was at that time sitting outside the car was the driver and that man admitted the fact. He then asked the man for his license and for his name. The man had no license and said his name was Bansi Pande.

On the 29th June the Superintendent directed the Sub-Inspector of the Kotwali Police-station to get the driving license of Bansi Pande and the permit of Car no. 386-H. On July 1st the Sub-Inspector sent the permit of Car no. 386-H and also the driving license of Gur Narain Pande who was found to be driving the car on the first of July. It was

(1) (1891) I. L. R. 13 All. 351. (2) (1889) I. L. R. 13 Bom. 506

stated that no man named Bansi Pande could be traced. On the 4th July Gur Narain appeared with a petition to the effect that he had been driving the car since 1st July and that his name was not Bansi Pande. The Superintendent saw that Gur Narain was not the man who had admitted himself to be the driver on the 28th June, and gave order of inquiry from the owner of the car as to who was his driver on that date. He suggested, probably from something he heard from Gur Narain, that it would be a man called Lachman Singh who drove the car. Lachman Singh was then produced before the Superintendent, and though he denied that he had driven the car on the 28th the Superintendent recognised him and identified him as the man who had given his name as Bansi Pande. The Superintendent of Police then laid a complaint against Lachman Singh to the following effect:—

"I complain against Lachman Singh of Palakia, police-station Sherghati, that on 28th June 1927 he was detected by me driving taxi car no. 386-H without a driving license, and when questioned by me he falsely gave his own name as Bansi Pande and thereby misled me as a public servant to frustrate prosecution of himself for an offence under the Motor Vehicles Act.

I request that he may be prosecuted under section 182, Indian Penal Code."

At the trial the Superintendent and the Sub-Inspector of Police gave evidence as to the facts I have related above. Lachman Singh produced no evidence in his defence nor did he in any way break down the prosecution evidence by cross-examination.

The learned Deputy Magistrate accepted the evidence of the Superintendent as true, but he found that the facts proved did not constitute an offence within the purview of section 182. In his opinion the words "gives information" in section 182 mean "volunteers information" and are not intended to apply to a statement made in answer to a question put by a public servant. As Lachman Singh gave a false name in answer to a question put by the Superintendent, the learned Deputy Magistrate held that no offence under section 182 had been committed and he therefore acquitted the accused.

It is evident, I think, that the learned Deputy Magistrate has based his finding on a sentence at page 365 of Mr. Ratanlal's "Law of Crimes," Tenth Edition, supported by a citation of a case, *Mangu* v. *The Emperor*(1), in the footnote, for he has himself cited that case. What was actually decided in *Mangu* v. *The Emperor*(1) was that section 182 does not cover an answer giving false information to a police officer during an investigation under section 161 of the Code of Criminal Procedure. Where an answer is given to a police officer in the course of an investigation into an offence, section 162 of that Code would save the person conveying false information by that answer from prosecution under section 182. It is clear that when the learned Judge who delivered judgment in the case of *Mangu* v. *The Emperor*(1) said "The expression gives information in section 182 means to volunteer

(1) (1914) P. W. R. 35; 25 Ind. Cas. 985.

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information and was not, in my opinion, intended to apply to a statement made in answer to questions put by a public servant," he was referring to the facts of the case with which he was dealing, that is to say a happening during the investigation of an offence by the police, and did not intend to cover answers given to the police under other circumstances. There is nothing to justify the reading in of the word "voluntarily" before the word "gives" in section 182. In *Queen Empress* v. *Ramji Sajabarao*(1) it is shown that it was held that any false information given to a forest officer with the intent mentioned in section 182 of the Code is punishable under that section, whether that information is volunteered by the informant, or given in answer to questions put to him by that officer. In this Court Allanson, J., in *Bishwanath Singh* v. *Emperor*(2) after considering the above case, has held that the words "gives information" should not be interpreted as necessarily meaning "volunteers information," that is, that it must be information on some matter which is not already under inquiry by the public servant.

It cannot be held that the Superintendent of Police in the present case was holding an investigation and that the questions put to Lachman Singh were put under section 161, Criminal Procedure Code, so as to give Lachman the benefit of section 162, Criminal Procedure Code.

I must hold that the ground given by the learned Deputy Magistrate for the acquittal of Lachman Singh was not a good ground and that he erred in law.

It now remains to consider whether, on the facts of this case, an offence was committed within the purview of section 182. Under section 6 of the Indian Motor Vehicles Act, 1914 (VIII of 1914)

> "No person shall drive a motor vehicle in a public place unless he is licensed in the prescribed manner."

Under section 8

> "The driver of a motor vehicle shall produce his license upon demand by any police officer,"

and under section 4

> "The person in charge of a motor vehicle shall cause the vehicle to stop and to remain stationary so long as may reasonably be necessary when required to do so by any police officer for the purpose of ascertaining his name and address with a view to prosecuting such person under this Act."

Section 16 prescribes penalties for contravention of the above provisions of the Act.

The Superintendent of Police, thinking, it appears, that the car was overloaded, went up and asked who was the driver and where was his license. Lachman admitted that he was the driver but could not produce a license, he thus appears to have contravened the provisions of sections 6 and 8 of the Act and was liable to prosecution. When asked his name by the Superintendent he gave a false name apparently to

(1) (1886) I. L. R. 10 Bom. 124. (2) (1927) 104 Ind. Cas. 712.

save himself from prosecution, or, as the complaint states it, he "misled" the Superintendent of Police, a public servant, "to frustrate prosecution of himself for an offence under the Motor Vehicles Act."

Section 182 of the Indian Penal Code runs as follows—

"Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it likely that he will thereby cause, such public servant—

(*a*) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(*b*) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished, etc."

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The offence consists in the giving of false information with the particular intent described in clauses (*a*) and (*b*). In the present case we are not concerned with the intention described in clause (*b*) for in giving a false name Lachman does not seem to have intended that the Superintendent should use his power to the injury or annoyance of any other person. He merely wanted to save himself from prosecution. Had there existed a motor-driver called Bansi Pande against whom, on the false information of Lachman, the Superintendent might have taken action, clause (*b*) would certainly have made Lachman liable to prosecution under the section, but it appears that the name Bansi Pande was a mere invention of Lachman.

With regard to clause (*a*) of the section, whether the public servant, on receipt of the false information, actually acts or omits to act, as the false informer intended he should, matters not at all. Straight, J., in the case of *Queen Empress* v. *Budh Sen*(1) said: "It is sufficient if, the party charged gave information which was false with the intention of causing, or knowing it likely that a public servant would be caused to exercise his lawful power or authority to the injury of an individual, or to do or omit to do something which he ought not to do or omit to do were the true state of facts known to him. In other words the criminality contemplated by section 182 does not depend upon what is done or omitted to be done by the public servant on such false information, but what was, from the facts, the reasonable intention to be inferred on the part of the person who gave the false information."

In that case certain persons had sent a telegram to the District Magistrate at the time of the Mohurrum festival to the effect that an armed mob had collected in a certain locality, intending by the information to induce the Magistrate to take measures to protect that locality from damage, and perhaps to leave another locality unguarded. The District Magistrate disbelieved the information and took no action. The information proved to be false.

Straight, J., stated—"In my opinion this is the kind of mischief at which the latter portion" (the earlier portion since the amendment of 1895) "of section 182 is aimed. Persons are not, by making reckless statements to a public servant, to bring the office of that public servant,

(1) (1891) I. L. R. 13 All. 351.

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into contempt, and it is absolutely indifferent whether by means of false information given with any of the intentions I have mentioned, he is or is not induced to do or not to do any act."

Edge, C.J., in the same case said:—"I agree with my brother Straight that the intention of the Legislature was that a public servant should not be falsely given information with the intent that he should be misled by a person who believed that information to be false and was intending to mislead him."

In the case of *Queen Empress* v. *Ganesh Khanderao*(1) Jardine, J., dealing with section 182, as it stood before its amendment in 1895, found that to constitute an offence under what is now clause *(a)* of the section it is not necessary to shew that the act done would be to the injury or annoyance of any third person. Referring to the words "such public servant ought not to do or omit" he says "But the latter phrase using the word 'ought' which implies duty and excludes personal choice, covers duties imposed by more particular statutes, as well as duties arising otherwise from the status or office of the public servant. The police, for example are bound by express statute to vigilance in the prevention and detection of crime and the apprehension of offenders."

Now in the present case it was the duty of the Superintendent, as a police officer, on finding that the driver of the motor car had no license with him to take steps for his prosecution for contravention of the provisions of sections 6 and 8 of the Indian Motor Vehicles Act, at least, for inquiry whether the driver held any license; and for the purposes of such prosecution or inquiry it was absolutely necessary that he should know the name of the driver.

It is clear that in giving the false name of Bansi Pande Lachman's intention was to cause the police officer to take steps for the prosecution of a Bansi Pande who did not exist and to omit to take steps against himself, Lachman Singh, against whom it would be the duty of the Superintendent to take steps, if the true state of facts respecting the name of the informant were known to him.

It may be that Lachman knew that an inquiry would be made and that, after inquiry, it would be found that no Bansi Pande existed, so that his false information would be merely obstructive, but even so, by that obstruction he was causing the police officer to take action against a non-existent person which he ought not to do, and to omit to take action against himself, as it would be the Police officer's duty to do, were the true state of facts known to him.

I have some doubt whether a case such as the present one was within the contemplation of the framer of section 182 when the section was drafted, and the three *Illustrations* given rather tend to show this. They seem to imply that there should be some ultimate annoyance to some third person, even though that person is not named in the false information. But clause *(a)* of the section does not require that there should be injury or annoyance to third person, and it has been decided by the Courts that it does not.

(1) (1889) I. L. R. 13 Bom. 506.

Whatever may have been the intention of the framer of the section, I am satisfied that, on its strict construction, the false information given by Lachman in the present case, comes within the mischief of the section, and I would therefore allow the appeal, set aside the acquittal, find Lachman guilty of an offence punishable under section 182 and sentence him to pay a fine of twenty-five rupees, or, in default, three days' rigorous imprisonment.

WORT, J.

WORT, J.—I regret to say that I differ from my learned brother in the decision which he has arrived at in this case.

The question is whether the matter comes within section 182 of the Indian Penal Code. The learned Magistrate dismissed the complaint as he was of the opinion that the expression "gives information" used in the section means volunteers information. So far as that part of his decision is concerned, it is quite clear that he is wrong to state that the expression "gives information" means to volunteer information and not giving an answer to a question, and reading something into the section which is not there. The learned Magistrate also appears to have based his decision on cases which are not in point.

The learned Advocate for the respondent has argued that the decision of the Magistrate was right that the expression used in the section must mean "volunteers information," otherwise the statement of the respondent made in this case will come within section 162 of the Criminal Procedure Code as being a statement made within the course of an investigation by the police. The cases of *Queen-Empress* v. *Ramji Sajaba Rao*(1) and *Emperor* v. *Bishwanath Singh*(2) are quoted as the basis of his argument. But neither of those cases apply to the facts of this case as there was already a first information: in other words, the police had been set in motion in investigating the information and consequently those statements made thereafter were privileged under section 162 of the Criminal Procedure Code. These authorities quoted, therefore, are not authorities for the proposition that no statement made in answer to a question can be the subject-matter of a complaint or prosecution under section 182 of the Indian Penal Code. I am clearly of the opinion that it matters not whether the statement is volunteered or made in answer to a question. Nor does it matter whether the person making the false statement having had the intention to cause the officer to do or to omit doing something, that purpose is carried out [*Queen-Empress* v. *Budh Sen*(3)]. But there remains, however, a very difficult question in this case and that is whether the respondent intended by his false statement to cause the officer to do or omit doing something within the meaning of the section. First of all, it is clear that the respondent, in giving a false name, had some intention. Now what was that intention? It is, stated broadly, done for the purpose of escaping prosecution. The learned Advocate for the respondent argues that there could have been no intention in this case or, rather, this court cannot hold that there was an intention, as there is no evidence that the Superintendent of Police was known to the respondent. He was in all probability in mufti. The respondent did not know to whom he was speaking and, therefore, it cannot be

(1) (1886) I. L. R. 10 Bom. 124. (2) (1927) 104 Ind. Cas. 712.
(3) (1891) I. L. R. 13 All. 351.

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said that he made a false statement to an officer with an intention to cause that officer to do or to omit doing anything. However this argument cannot be supported as it is obvious that if the respondent was unaware of the identity of the person to whom he was speaking and thought that he was an ordinary member of the public it is perfectly obvious that he would have either given his correct name or refused to give him any name altogether as he could not contemplate any danger from his action. I think that the false statement was made with an intention. The question is what was that intention. First of all, in making the false statement to escape a prosecution, as I have put it, there clearly was not an intention to cause the officer to do something. Was it an intention to cause the officer to omit doing something? In my judgment the expression 'omit' in this section indicates an operation on the mind of the officer which has a result of making that officer give up a purpose which he otherwise would have pursued. It does not, to my mind, indicate placing an obstacle in the way of the officer performing his duty and thus preventing or making it more difficult for him to carry out an intention which was in his mind. To make a statement which could put difficulties in the way of the officer from carrying out a purpose which he has in his mind seems to be to make a statement for the purpose of preventing an officer from carrying out his purpose. It is argued by the learned Government Advocate that in making this false statement the officer omitted to prosecute the individual making the statement. That argument, in my opinion cannot be sustained. The false statement did not cause the officer to omit prosecuting the respondent. An intention is still in the officer's mind. He was not omitting to do anything but in pursuing his purpose he was, by reason of the false statement, met with such obstacles that in the long run he may not have been able to prosecute the respondent. That statement of facts appears to be very far from what is indicated in the section. The section says, "cause the officer to do or to omit." On the one hand the making of a false statement causes the officer to act otherwise than he would have acted and on the other hand a false statement causes the officer to relinquish the intention which he otherwise would have had in his mind. In my judgment this case does not come within the section and the decision of the Magistrate is right although, it is quite clear, not for the reasons he stated.

Although the *Illustrations* given to the section are not exhaustive yet the *Illustrations* under section 182 bear out this construction. It is a construction which may be considered to be very strict but this being a penal statute must be construed strictly. I would dismiss the appeal.

Owing to the difference of opinion between Adami and Wort, JJ., the case was placed before Allanson, J.

Sultan Ahmad, Government Advocate, for the Crown.

B. C. De, for the prisoner.

18th April. 1928.

ALLANSON, J.—This appeal by the Crown against the orders of a Deputy Magistrate of Gaya acquitting Lachman Singh of an offence under section 182 of the Indian Penal Code has been heard by me under section 429 of the Code of Criminal Procedure, the learned Judges of a Division Bench having been divided in opinion.

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ALLANSON, J.

The facts have been stated in the judgment of Adami, J. The question for decision is whether a driver of a motor car driving without a license, who when asked for his name by the Superintendent of Police gave a wrong name, has committed an offence under section 182 of the Indian Penal Code. The learned Deputy Magistrate acquitted the accused on the ground that the words "give information" in section 182 mean "volunteers information," and are not intended to apply to a statement made in answer to a question put by a public servant. The learned Judges of the Division Bench were in agreement that such a restricted meaning should not be given to those words. This point was not argued before me, and I adhere to the view expressed by me in *Bishwanath Singh* v. *Emperor* (1).

Section 182 runs as follows:

"Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause or knowing it to be likely that he will thereby cause such public servant—

(*a*) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(*b*) to use the lawful power of such public servant to the injury or annoyance of any person shall be punished, etc."

Clause (*b*) has no application.

There can be no doubt that Lachman gave information to a public servant knowing it to be false. The question is whether he did it with the intention or with the knowledge of the probable result described

(1) (1927) 104 Ind. Cas. 712.

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in the section. The duty of the Superintendent of Police was, after such enquiry, if any, as he thought fit, to prosecute for an offence under the Motor Vehicles Act. He might as a result of the false information given him have ordered a prosecution at once, in which case he would have done something which he ought not to have done, if the true state of facts were known to him. For a police officer ought not to prosecute a fictitious person. The Superintendent of Police, after ascertaining that a false name had been given him, might have been unable to discover who the driver was. He would then have had to omit prosecuting the real offender, which he would not have omitted had he known the true facts, namely, that the driver was Lachman. It actually happened in the present case that the police seized the driving license of another man who was found driving this car three days later. This man appeared with a petition before the Superintendent of Police to the effect that he was not the driver on that day, and asked for his license to be returned. The Superintendent of Police was in a position to say that he was not the driver who was wanted.

It was conceded by the learned Advocate for Lachman that it is the duty of a police officer to put the law in motion if an offence is committed, and that if the result of the false information was that he was induced to change his mind and not to prosecute, section 182 would apply. But he argued that, if the only effect of the false information was to put an obstacle in the way of the performance of his duty by the police officer, in other words if the performance of the duty was rendered more difficult, the giving of the false information would not come under section 182. I am unable to accept this argument. It is the intention in the mind of the informant, and not its effect on the mind of the police officer that is important. To take a simple instance. A police officer is running after a criminal who gives him the slip round a corner. A man on the road, who had seen the criminal run into a particular house, informs the police officer

that he has gone into another house. In one sense no doubt he is obstructing the police officer in the performance of his duty, that duty being to arrest the criminal without delay. But he is also intending to cause or knowing it to be likely that he will cause the police officer to do what he ought not to do, if he knew the true facts, to go into the wrong house, with the result that the criminal may successfully abscond from justice. The officer might have reason to suspect the truth of the information and might ignore it. How can that affect the intention which is in the mind of the informant? The committing of the offence might then conclusively depend on the intelligence or energy of the police officer. One officer might change his mind or intention by reason of the false information received by him. Another officer might not do so. I cannot see how the completion of the offence can depend on what the public servant does or omits. The question is the state of the mind of the informant, whether he intended by his false information to cause, or knew he would be likely to cause, the public servant to do or omit anything which he ought not to do or omit, if the true state of facts were known to him. Lachman by giving a false name must have intended to cause, or have known he would be likely to cause, the Superintendent of Police to prosecute a fictitious person or to omit prosecuting the real offender. What in fact the Superintendent of Police actually did is immaterial. I am in agreement with the views of the learned Judges in *Queen-Empress* v. *Budh Sen* (1), which have been quoted by Adami, J., in his judgment.

It was also argued that the intention was not to prevent the police officer from taking action, but to put obstruction or difficulty in the way of his doing so. This argument seems to involve a confusion of the means with the end. The most usual means of preventing a person doing a thing is to place obstruction or difficulty in his way.

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It was argued that the prosecution did not prove that Lachman knew that the person to whom he gave false information was a public servant. The answer to this argument has been given by Wort, J.

ALLANSON, J.

I allow this appeal, set aside the acquittal and convict Lachman Singh of an offence under section 182 of the Indian Penal Code and sentence him to pay a fine of Rs. 25 or, in default, three days' rigorous imprisonment.

APPELLATE CIVIL.

Before Kulwant Sahay and Macpherson, JJ.

1928.

April, 19.

HAZARIRAM

v.

KEDAR NATH MARWARI.*

Code of Civil Procedure, 1908 (*Act V of* 1908), *section* 64, *Order* XXI, *rules* 16, 53—*Decree for mesne profits, attachment of—subsequent transfer, effect of—Transferee, whether entitled to execute the decree.*

The attachment of a decree for mesne profits has not the effect of preventing a valid transfer of the decree. Therefore a transfer of the decree during the subsistence of the attachment is not invalid and the transferee is entitled to be substituted in place of the assignor and to apply under Order XXI, rule 16 for execution.

The effect of an attachment of a decree for the payment of money being specially provided for in Order XXI, rule 16, of the Code of Civil Procedure, the general provisions of section 64 do not apply.

Appeal by the assignee.

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

*Appeal from Original Order no. 28 of 1927, from an order of Babu Surendra Nath Sen, Subordinate Judge of Godda, dated the 17th January, 1927.