

1928.  
 MAHANTH  
 RAM NARAIN  
 GIR  
 GAURI  
 SHANKER  
 LAL.  
 JWALA  
 PRASAD, J.

different lands held in possession of the different defendants do not at all alter the nature of the suit. The plaintiff had to specify the details in the plaint. Nor does it in any way alter the nature of the case that the different defendants may be liable for separate mesne profits payable to the plaintiff. That is the liability of the defendants inter se. The plaintiff claims against them a total sum of Rs. 8,399-6-0 as mesne profits. The schedule only gives an account of this total sum claimed.

In the case of *Nundo Kumar Naskar v. Banomali Gayan* (1) it was observed: "In England, as was pointed out in *Ishan Chunder Hazra v. Rameswar Mondol* (2) in an action in ejectment, 'all the parties in possession are joined,' and this includes the lessor as well as the tenants, if the lessor happens to be in possession of part of the land in suit." In support of this reference was made to the English law on the subject.

I, therefore, hold that section 17 of the Court-fees Act does not apply to the case and that the court-fee paid is sufficient.

S. A. K.

### CRIMINAL REFERENCE.

*Before Adami and Wort, J. J.*

MAGUNI PADHAN

v.

KING-EMPEROR.\*

1928.

Feb., 14.

*Penal Code, 1860 (Act XLV of 1860), section 211—complaint by police against informant—Court, whether bound to call upon informant to shew cause before issuing summons.*

Where, in a cognizable case, the police report an information given by an informant to be false and make a complaint

\*Criminal Reference no. 106 of 1927 made by H. R. Meredith, Esq., I.C.S., Sessions Judge of Cuttack, by his letter no. 1796-Cr., dated the 7th November, 1927.

(1) (1902) I. L. R. 29 Cal. 871.

(2) (1897) I. L. R. 24 Cal. 831.

against that informant under section 211, Penal Code, 1860, the Court is not bound, before issuing summons under section 211, to call upon the informant to shew cause why he should not be prosecuted.

The question to be decided by the Bench in this case was referred by Sir Jwala Prasad, J., for decision. The question was whether, when the police had reported an information given by an informant to be false in a cognizable case and had laid a complaint against that informant under section 211, the Court was bound, before issuing summons under section 211, to call upon the informant to shew cause why he should not be prosecuted.

A complaint was lodged against Maguni Padhan and his master and two others to the effect that they had caused injuries to two cows and one bullock and were punishable under section 429 of the Indian Penal Code. The police were asked to inquire and they reported that the complaint made against Maguni and others was true. Thereafter Maguni went to the police and laid an information that the complainant in the other case and others had come to his house and burnt it and had caused him severe injuries by fire. The police investigated this second information and came to the finding that it was false. Maguni had been sent to the Assistant Surgeon to be examined and the Assistant Surgeon reported that the injuries which were alleged to be due to fire were in fact caused by sulphuric acid and the police concluded that the information was false and that it was a mere counterblast to the complaint made against him under section 429. The police, therefore, filed a complaint under section 211 against Maguni. When Maguni was summoned under section 211, he moved the Sessions Judge on the ground that he should have been called upon to show cause before taking proceedings against him under section 211. The Sessions Judge was inclined to agree that Maguni should have been called upon to show cause and relied on certain decisions of the

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High Court. He, therefore, referred the case under section 438 of the Code of Criminal Procedure to the High Court.

No one appeared in support of the reference.

ADAMI, J.

ADAMI, J. (after stating the facts set out above proceeded as follows): The Code nowhere requires that before proceedings are taken under section 211 the person to be proceeded against must be given a chance of shewing cause. As a matter of caution many decisions of the courts have laid down that it is wise to give an informant an opportunity of shewing cause to prove that his case is true before he is prosecuted and no doubt in many cases, if not in most, the courts would exercise a wise discretion in giving a chance to an informant of explaining matters and shewing that his case is true. In most cases if an informant is dissatisfied with the police investigation, he comes to the court and asks that the case may be reinvestigated or makes allegations against the police. In that case the court is bound to take his petition as a complaint and proceed accordingly. In the present case the informant never made any protest against the manner in which the investigation was held by the police and he waited until proceedings had been taken under section 211 before he came up. The question is whether it was necessary in this case for the Magistrate to call upon the informant Maguni to shew cause. The police report on the face of it showed that the case was a false one. It would be impossible for Maguni to explain away the fact that the injuries which he said were caused by fire were really caused by sulphuric acid. In the present case, therefore, I think that there is no room for inquiring whether the Magistrate exercised a wise discretion in proceeding under section 211. The cases which have been referred to by the learned Sessions Judge are of a different nature. There was some reason for the Court to be uncertain whether the investigation had been proper or not.

I agree with the opinion expressed by Sir Jwala Prasad, J., that in the present case no notice to shew cause was necessary before proceedings were taken under section 211.

I would discharge the reference.

WORT, J.—I agree.

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*Reference rejected.*

## APPELLATE CRIMINAL.

*Before Adami and Wort, J.J.*

DEONANDAN DUSADH

v.

KING-EMPEROR.\*

1928.

Feb., 16.

*Evidence Act, 1872 (Act I of 1872), section 27—voluntary information by husband who had killed his wife—corpse discovered in consequence of statement—whether statement is a confession of “a person accused of an offence.”*

A husband who had fatally assaulted his wife immediately went to the police-station and stated, *inter alia*,

“I went into the west-facing room and finding my wife sitting, wounded her and she became senseless.

In consequence of this information the sub-inspector went to the house of the informant and found the corpse of the woman in the west-facing room.

*Held*, that as the informant had not, up to the time of making the statement set out above, been accused of an offence, he was not, at that time “a person accused of an offence” within the meaning of section 27, Evidence Act, and hence the statement was not admissible under that section.

*Queen Empress v. Babu Lal* (1), *Queen-Empress v. Kamali* (2) and *Legal Remembrancer v. Lalit Mohan Singh* (3), referred to.

\*Criminal Appeal no. 285 of 1927, from a decision of J. A. Saunders, Esq., I.C.S., Sessions Judge of Muzaffarpur, dated the 2nd December, 1927.

(1) (1884) I. L. R. 6 All. 509.

(2) (1886) I. L. R. 10 Bom. 595.

(3) (1922) I. L. R. 49 Cal. 187.