

APPELLATE CRIMINAL.

Bejore Adami and Chatterji, JJ.

KING-EMPEROR

1929.

Jan., 28.

v.

SOBARATI SAIN.*

Penal Code, 1860 (Act XLV of 1860), section 211—false information to police—informant not called upon to prove his case—informant's prosecution—validity of conviction.

Where the police report that information given to them was maliciously false, and the informant takes no steps to challenge the police report by means of a petition to a magistrate, his conviction under section 211 in respect of the false information cannot be contested on the sole ground that he was not afforded an opportunity of proving his case.

Tenu Dhanuk v. King-Emperor (1), *The Government v. Karimdad* (2) and *Queen-Empress v. Sham Lall* (3), distinguished.

The facts of the case material to this report are stated in the order of Chatterji, J.

Sir Sultan Ahmed, Government Advocate, for the Crown.

B. P. Varma, for the accused person.

CHATTERJI, J. : One Sobarati Sain lodged a first information at the thana making a complaint against certain persons of offences under sections 457 and 380 of the Indian Penal Code. The police, after inquiry, made a report to the Magistrate that the case brought by the complainant was maliciously false and that the complainant might be prosecuted under

*Government Appeal no. 10 of 1928, from an order of J. Chatterji Esq., Sessions Judge of Saran, dated the 4th July, 1928, reversing the order of Babu M. N. Sen, Subdivisional Magistrate of Siwan, dated the 16th May, 1928.

(1) (1927) 8 Pat. L. T. 662.

(2) (1881) I. L. R. 6 Cal. 496.

(3) (1887) I. L. R. 14 Cal. 707.

section 211. The complainant was prosecuted with the result that he was found guilty and convicted by the Subdivisional Magistrate.

In appeal the Sessions Judge set aside the conviction on the ground that no opportunity had been given to the appellant to prove his case before his prosecution under section 211 of the Penal Code was started. In support of his judgment we are referred to the case of *Tenhu Dhanuk v. King-Emperor*(¹). This ruling has absolutely no application to the facts of the present case. There the police report was challenged and the complainant made a petition to the Court. It is obviously the duty of the Court, if such a complaint be made to it, to take cognizance of it under section 190 of the Criminal Procedure Code before taking action on the police report and prosecuting the man. No authority has been cited to support the contention that a Magistrate is bound to issue notice to the person against whom a complaint is made by the police and ask him to show cause why he should not be prosecuted.

Reference was made on behalf of the accused to the cases of *The Government v. Karimdad* (²) and *Queen-Empress v. Sham Lall*(³). In both these cases the accused appeared before the Magistrate and asked that his case might be investigated; and it was held that he should be given an opportunity to prove his case before being prosecuted on the police report. No such thing happened in this case.

In my opinion the position taken up by the learned Sessions Judge cannot be justified in law. It appears that he has not considered the merits of the case as he disposed of the appeal on this technical ground. He should now consider the merits of the case and rehear the appeal.

ADAMI, J. : I agree.

Appeal remanded.

(1) (1927) 8 Pat. L. T. 662. (2) (1881) I. L. R. 6 Cal. 496.

(3) (1887) I. L. R. 14 Cal. 707.