REVISIONAL CRIMINAL.

Before Mr. Justice Lumsden.

MEHR CHIRAGH DIN—Petitioner,

versus

THE CROWN—Respondent.

1923

May 12.

Criminal Revision No. 398 of 1923.

Criminal Procedure Code, Act V of 1898, sections 200 and 537 (a)—Failure to examine the complainant—irregularity—Complaint—application by complainant, a subordinate Police Officer, to his superior officer praying that a prosecution be lodged.

Petitioner's mares were stolen and he found the tracks led past the house of the local Sub-Inspector of Police. Petitioner, thereupon, came to the conclusion that the Sub-Inspector would not assist him in respect of the theft and telegraphed to the Superintendent of Police alleging that the Sub-Inspector of Police had not only refused to record the case, but was engaged in friendly communication with the thieves. An enquiry was held and it was found that petitioner's allegations were entirely without foundation. The Superintendent of Police then sanctioned the prosecution of the petitioner for an offence under section 182, Indian Penal Code, and the Sub-Inspector concerned received instructions to submit an application by way of complaint, and to append a calendar of the witnesses. He sent the document, Exhibit P. F., to the Court Inspector praying that a prosecution be lodged against the petitioner. He also submitted a list of witnesses. These documents were produced before the Magistrate who after recording evidence convicted the petitioner of an offence under section 182, Indian Penal Code.

Held, that the failure to examine the complainant under section 200, Criminal Procedure Code, was merely an irregularity and as it did not occasion a miscarriage of justice or prejudice the accused in any manner it was covered by section 537 (*a*) of the Criminal Procedure Code.

Girdhari Lal v. *Crown* (1), followed.

Lokenath Patra v. *Sanyasi Charan Manna* (2), and *Ali Muhammad* v. *Crown* (3), referred to.

Held further, that though Exhibit P. F. was not addressed to a Magistrate by the Sub-Inspector of Police but to his superior

(1) 11 P. R. (Cr.) 1911. (2) (1903) I. L. R. 30 Cal., 923.
(3) 2 P. R. (Cr.) 1912.

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officer praying that a case under section 182 be lodged against the petitioner it practically amounted to a complaint.

Dilan Singh v. *Emperor* (1), and *King-Emperor* v. *Sada* (2), referred to.

Tara Prosad Laha v. *Emperor* (3), *Bhana* v. *Crown* (4), and *Kailas Kurmi* v. *Emperor* (5), distinguished.

ABDUL RASHID for the petitioner—Exhibit P. F. is not a complaint because : (1) It was not addressed to a Magistrate nor was it meant for presentation in a Court of Law ; (2) It was not duly stamped ; (3) It was not presented to the Magistrate by the complainant or a duly authorised agent of his ; (4) It was merely an application by a subordinate police official praying his superior Police Officer to institute a case against the petitioner. *Tara Prosad Laha* v. *Emperor* (3), *Kailas Kurmi* v. *Emperor* (5), *Bhana* v. *Crown* (4), *Ladha Singh* v. *Crown* (6) *Dilan Singh* v. *Emperor* (1). The Magistrate did not record any statement of the complainant which is obligatory under section 200, Criminal Procedure Code. *Kesri* v. *Muhammad Bakhsh* (7), *Lokenath Patra* v. *Sanyasi Charan Manna* (8), and *Ali Muhammad* v. *Crown* (9).

THE GOVERNMENT ADVOCATE for the Respondent—The objection that no statement of the complainant was recorded was not taken till the last stage in the trial. This irregularity has not prejudiced the accused in any way, and was cured by section 537 (*a*), Criminal Procedure Code—*Girdhari Lal* v. *Crown* (10).

There was a valid sanction on the record and Exhibit P. F. was, to all intents and purposes, a complaint. *Dilan Singh* v. *Emperor* (1), and *King-Emperor* v. *Sada* (2).

Application for revision of the order of D. Johnstone, Esquire, Sessions Judge, Multan, dated the 29th January 1923, *rejecting certain legal grounds of appeal and ordering that the appeal preferred from the judgment of* Lala *Harivansh Lal, Magistrate, 1st Class, Multan, dated the* 16*th December* 1922, *be heard on the merits.*

(1) (1912) I. L. R. 40 Cal. 360.
(2) (1901) I. L. R. 26 Bom. 150 (F. B.).
(3) (1903) I. L. R. 30 Cal. 910 (F. B.).
(4) 32 P. R. (Cr.) 1910.
(5) (1902) I. L. R. 30 Cal. 285.
(6) 13 P. R. (Cr.) 1915.
(7) (1896) I. L. R. 18 All. 221.
(8) (1903) I. L. R. 30 Cal. 923.
(9) 2 P. R. (Cr.) 1912.
(10) 11 P. R. (Cr.) 1911.

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LUMSDEN J.—The facts leading up to the criminal revision are as follows:—During the night of the 18th-19th December 1921 two mares were stolen from the house of the petitioner. The latter followed up the tracks which, according to him, led past the house of the local Sub-Inspector of Police. For reasons which need not be detailed, the petitioner came to the conclusion that the Sub-Inspector would not assist him in respect of the theft and telegraphed to the Superintendent of Police alleging that the Sub-Inspector of Police had not only refused to record the case but was engaged in friendly communication with the thieves. An enquiry was held on receipt of this telegram with the result that the Deputy Superintendent of Police, reported that the allegations made by the petitioner were entirely without foundation. Thereafter the Superintendent of Police recorded an order to the effect that as there was in his opinion ample evidence that an offence had been committed under section 182, Indian Penal Code, he sanctioned the prosecution of the petitioner under section 195, Criminal Procedure Code, for this offence. It was further directed that the necessary action should be taken without delay. In accordance with the terms of the order Natha Singh, the Sub-Inspector concerned, received instructions to submit an application by way of complaint and to append a calendar of the witnesses. These documents were prepared and submitted and were eventually produced before the Magistrate, who, after recording evidence, found the petitioner guilty and sentenced him to two months' rigorous imprisonment plus a fine of Rs. 500. Petitioner preferred an appeal to the Sessions Judge in whose Court various legal objections to the procedure were urged. The Sessions Judge has repelled these objections but adjourned the hearing of the appeal on the merits to enable the petitioner to move this Court on the revision side.

The only two points urged before me are -

(*a*) that as there was no complaint within the meaning of Section 4 of the Criminal Procedure Code, the Magistrate had no jurisdiction to try the case, and

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(*b*) that as the Magistrate failed to examine the complainant under section 200, Criminal Procedure Code, all the subsequent proceedings were vitiated.

The latter objection is not, in my opinion, tenable. It is based on the assumption that the use of the word 'shall' in section 200, Criminal Procedure Code, renders an omission to examine a complainant an illegality as distinguished from a mere irregularity. No authority, however, has been quoted to support this view, on the other hand the very decisions on which petitioner relies *Lokenath Patra* v. *Sanyasi Charan Manna* (1) and *Ali Muhammad* v. *Crown* (2), clearly imply that such omissions amount to irregularities to which the provisions of section 537, Criminal Procedure Code, apply. In both the cases referred to, the objector was the complainant and it is easy to understand that a complainant who is not afforded an opportunity of supporting his written complaint by an oral statement may be prejudiced. In the present case it is the accused who is setting up a grievance. This grievance was not mentioned until the time of arguments in the trial Court and there is a presumption therefore that it had not made itself felt prior to this late stage in the case. A somewhat analogous case is reported in *Girdhari Lal* v. *Crown* (3) and it was then laid down that as the failure to comply with the provisions of section 200, Criminal Procedure Code, had not occasioned a miscarriage of justice, the irregularity was cured by section 537 (*a*) of the Criminal Procedure Code. In the present case no attempt has been made to show that the accused was prejudiced in any way and I have no hesitation in holding that the omission is only an irregularity which is covered by the section mentioned.

Petitioner's main contention is, however, that there was no complaint and that consequently the Magistrate had no power to take cognisance of the case. In support of this argument reference has been made to *Tara Prosad Laha* v. *Emperor* (4), *Bhana* v. *Crown* (5) and *Kailas Kurmi* v. *Emperor* (6). The first two authorities are not,

(1) (1903) I. L. R. 30 Cal. 923.
(2) 2 P. R. (Cr.) 1912.
(3) 11 P. R. (Cr.) 1911.
(4) (1903) I. L. R. 30 Cal. 910 (F. B.).
(5) 32 P. R. (Cr.) 1910.
(6) (1902) I. L. R. 30 Cal. 285.

however, in point. They deal with the question of complaints with reference to section 199, Criminal Procedure Code. That section is of a special nature. It restricts the power of the Courts to take cognisance of matrimonial offences and prescribes that before a Court interferes there shall be a definite request in the shape of a complaint on the part of the injured party. On the other hand, section 195, Criminal Procedure Code, does not lay down that any particular person should submit the complaint; provided that sanction has been obtained, the personality of the complainant is immaterial. The third authority on which petitioner relies is also distinguishable as in that case no previous sanction had been obtained, nor did the public servant concerned (a peon) do more than lodge a report at the *thana*. In the present case the sanction of the Superintendent of Police was duly obtained and that officer directed that the necessary action should be taken on this sanction. The public servant concerned then drew up what is virtually a complaint and sent it up along with a calendar of witnesses to his immediate superior who had the documents presented to the Magistrate by the Court Inspector. The only thing that can be urged on behalf of the petitioner is that this complaint was not addressed to a Magistrate. In *Dilan Singh* v. *Emperor* (1) it was held that a recommendation for prosecution by a public officer under section 211 of the Indian Penal Code, comes within the meaning of the word complaint as used in section 195, Criminal Procedure Code, as that section clearly contemplates prosecution at the instance of police officers. In the body of that judgment the Bench made the following further remarks :—

"In any case when a police officer asks that a person should be prosecuted under section 211 for information given to him and gives evidence himself in support of that charge we cannot see that any serious irregularity can arise in the conviction of the accused in proceedings initiated upon that report."

Mutatis mutandis these remarks apply with equal force to the present case. In the Full Bench ruling, *King Emperor* v. *Sada* (2), it was held that a report by a police officer in a non-cognizable case was a complaint within the definition. I agree with the learned Sessions Judge

(1) (1912) I. L. R. 40 Cal. 360. (2) (1901) I. L. R. 26 Bom. 150 (F. B.).

that the document (Exhibit P. F.) is to all intents and purposes a complaint and that the Magistrate had jurisdiction to act upon it. The slight irregularity in form has not in any way prejudiced the petitioner.

It follows that this petition must be dismissed. The records will be returned to the Sessions Judge to enable him to dispose of the appeal on the merits.

A. R.

Petition dismissed.

APPELLATE CIVIL.

Before Mr. Justice Harrison and Mr. Justice Zafar Ali.

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May 12.

HARJI MAL AND OTHERS (DEFENDANTS) APPELLANTS

versus

DEVI DITTA MAL AND OTHERS (PLAINTIFFS) RESPONDENTS.

Civil Appeal No. 2309 of 1923.

Civil Procedure Code, Act V of 1908, Order XVIII, rule 2—Judgment passed without hearing arguments of counsel who had filed written arguments.

Mr. M. S., the Sub-Judge, who heard the present case fixed the 10th November for arguments. On that date counsel for the parties stated that they were not ready to argue and asked for an adjournment which he did not allow but directed them to put in written arguments if they wished to do so. These were put in Court—the Sub-Judge left the district on transfer without writing a judgment. On the 22nd January the parties appeared before the Sub-Judge's successor who fixed a date for inspection and after a further adjournment had been given at the request of the defendant-appellants he eventually carried out the inspection in the presence of the parties and then gave judgment.

Held, that as the parties had ample opportunity to argue the case before both the Sub-Judges and had failed to do so, the judgment of the trial Court was not a nullity.

Mahmud Khan v. *Ghazanfar Ali* (1), and *Sher Khan* v. *Bahadur Shah* (2), distinguished.

Civil Procedure Code, 1908, Order XVIII, rule 2, referred to.

(1) (1920) 57 Indian Cases 34. (2) 91 P. R. 1904.