APPELLATE CRIMINAL.

Before Mr. Justice Mya Bu.

1928

June 25.

RAMBROSE
v.
KING-EMPEROR.*

Penal Code (Act XLV of 1860), ss. 182 and 211—Offence committed falling within the purview of both sections—Prosecution should be under s. 211—Charge before the police and subsequent institution of a proceeding before the Court—Criminal Procedure Code (Act V of 1898), s. 195.

Accused laid a false charge of robbery and hurt in an information before the police, which was, after enquiry, thrown out. Subsequently, the accused lodged a complaint in Court for the same offence which the magistrate dismissed as false on the police report.

Held, that the accused committed an offence which came both within the purview of s. 182 and s. 211 of the Penal Code. An offence under the latter section includes an offence under the former section, but the converse does not hold good.

Accused, under such circumstances should be prosecuted under s. 211 of the Penal Code on a complaint by the Court according to the provisions of s. 195 (1) (*b*) of the Criminal Procedure Code, and not under s. 182 of the Penal Code merely on the complaint of the public servant concerned.

Bhokteram v. *Heera Kolita*, 5 Cal. 134; *Brown* v. *Ananda Lal Mullick*, 44 Cal. 650; *Empress* v. *Arjun*, 7 Bom. 574; *Emperor* v. *Sarada Prosad Chatterjee*, 32 Cal. 180; *Jaggu* v. *Pala*, 2 U.B.R. 95; *Queen-Empress* v. *Raghu Tiwari*, 15 All. 336; *Shaik Muhammad Yassin* v. *King-Emperor*, 4 Pat. 323—*referred to.*

MYA BU, J.—The petitioner applies to have the proceeding in Criminal Regular Trial No. 16 of 1928 of the Court of the Township Magistrate, Sagaing, now pending against him, quashed. The proceeding was instituted by a complaint laid against the petitioner by the officer-in-charge of the police-station at Sagaing, charging the petitioner with having committed an offence punishable under section 182, Indian Penal Code. The circumstances that led to the prosecution were as follows :—On the 27th January 1928 the petitioner went to the police-station at Sagaing and

* Criminal Revision No. 124B of 1928 (at Mandalay).

made allegations against one Bagwandin and Andy to the effect that they had jointly committed robbery on him, in the course of which, one of them caused hurt to him. The facts alleged by the petitioner constituted an offence punishable under section 394, Indian Penal Code. The police investigated the case, found it to be false and finally classified it as such; thereupon the petitioner lodged a complaint in Court against Bagwandin and Andy on the same facts and for the same offence, and the Headquarters Magistrate on receipt of it directed the police of Sagaing for enquiry and report. On receipt of the police report, the Headquarters Magistrate dismissed the complaint, classifying the case as "false". In these circumstances, the officer-in-charge of the police-station filed the complaint against the petitioner by which the trial now sought to be quashed was instituted.

The information given by the petitioner was of a cognizable offence, and it charged the persons named by him with having committed the offence. If that information was false, the offence committed by the petitioner would amount to not merely giving of false information under section 182, Indian Penal Code, but would also amount to laying of false charge within the meaning of section 211, Indian Penal Code, inasmuch as the information also falsely charged the particular persons named with having committed the offence mentioned in the information. From a comparison of these two sections of the Indian Penal Code, it appears that a person making a false charge is liable to be dealt with under either one or the other of them, and, as pointed out in *Bhokteram* v. *Heera Kolita* (1), an offence under section 211 includes an offence under section 182. Prosecution for a false charge may therefore be either under section 182 or

(1) (1879) 5 Cal. 184.

1928

RAMBROSE v. KING-EMPEROR.

MYA BU, J.

under section 211—see *Emperor* v. *Sarada Prosad Chatterjee* (1) and *Queen-Empress* v. *Raghu Tiwari* (2).

Though an offence under section 211 includes an offence under section 182, the converse will not hold good. It is plain that, where the offence falls under section 182 only and not under section 211, a complaint, in writing, of the public servant concerned or of some other public servant to whom he is subordinate, is all that is necessary under section 195 (1) (*a*) of the Criminal Procedure Code, to render the prosecution valid. It is also equally plain that, where the offence alleged is under section 211 and committed in, or in relation to, a proceeding in Court, the prosecution must, in order to be valid, be initiated by a complaint, in writing, of such Court or of some other Court to which it is subordinate, under section 195 (1) (*b*), Criminal Procedure Code. Therefore where information to the police amounting to a false charge under section 211, is followed by a complaint to the Court based on the same allegations and the same charge, the provisions of section 195 (1) (*b*) of the Criminal Procedure Code come into operation, and it has been held in *Brown* v. *Ananda Lal Mullick* (3), that in such a case complaint of the Court is necessary to the validity of a prosecution of the informant under section 211, Indian Penal Code, even if the prosecution be in respect of the false charge made to the police. As pointed out in *Shaik Muhammad Yassim* v. *King-Emperor* (4), the same rule will hold good irrespective of whether the Court investigated the complaint or not.

Had the petitioner in this case been prosecuted for an offence under section 211, Indian Penal Code, the case would certainly be governed by the

(1) (1904) 32 Cal. 180 (2) (1893) 15 All. 336
(3) (1916) 44 Cal. 650. (4) (1924) 4 Pat. 323.

provisions of section 195 (1) (*b*). What remains to be considered is whether in the circumstances of the case, the prosecution under section 182, Indian Penal Code, could properly be permitted in spite of the fact that the offence has amounted to one under section 211, Indian Penal Code.

According to the ruling in *Empress* v. *Arjun* (1) "Where a person specifically complains that another man committed an offence, and does so falsely with the object of causing injury to that person, he is guilty of making a false charge of an offence under section 211 and not under section 182." In *Sarada Prosad Chatterjee's* case (2) it was ruled that, if the false charge was a serious one the graver section 211 should be applied and that trial should be full and fair.

In *Jaggu* v. *Pala* (3), in which there were two proceedings against the accused, one under section 211 at the instance of the party aggrieved and another under section 182 at the instance of the public servant concerned,—it was pointed out that the ordinary rule should be followed, and the charge under section 182 must be abandoned in favour of the more serious charge under section 211, Indian Penal Code.

In a case like the present one, which came up before this Court in Criminal Revision No. 163B of 1927, where a person prosecuted under section 182, Indian Penal Code, contended that the offence fell under section 211, Indian Penal Code and the prosecution was incompetent except on the complaint of the Court concerned,—Pratt, J., ruled that the offence fell under section 211 and a complaint by the Magistrate before whom the false charge was made was necessary.

In view of the above rulings, I consider that, although the offence alleged against the petitioner

(1) (1882) 7 Bom. 184. (2) (1904) 32 Cal. 180. (3) II.U.B.R. (1914–16) 95.

1928

RAMBROSE v. KING-EMPEROR.

MYA BU, J.

falls under both section 182 and section 211, Indian Penal Code, prosecution under section 182 is quite improper. To permit such a prosecution, it will, in my opinion, be contrary to the general principle that a prosecution for a lesser offence should not be launched when the facts constitute a graver offence.

For the reasons stated above, I allow the application, and the proceedings before the Township Magistrate, Sagaing, are quashed.

APPELLATE CIVIL.

Before Mr. Justice Das and Mr. Justice Doyle.

1928

June 12.

S. A. S. CHETTYAR FIRM
v.
S. V. A. R. A. FIRM AND OTHERS.*

Civil Procedure Code (Act V of 1908), s. 73—Order for rateable distribution not a ministerial act—Order revisable by High Court under s. 115 of the Code—No inquiry as to ownership of property necessary when ordering rateable distribution.

An order made under s. 73 of the Civil Procedure Code is not a ministerial and non-judicial act of a Judge. The High Court can therefore interfere with such an order on revision.

In passing an order for a rateable distribution, a Court is not bound to inquire as to whom the property belongs.

Shankar Saruf v. *Mejo Mal*, (P.C.) 23 All. 313—*referred to.*

Bibi Uma v. *Rasoolan*, 5 Pat. 445 ; S. *Pillai* v. *Arunachalam*, 40 Mad. 841—*dissented from.*

Leach, Ganguli, Chowdhury, Doctor for the appellants.

Foucar, Shaffee, Basu, Venketram for the respondents.

* Civil Revision Nos. 321, 327 and 328 of 1927 against the order of the District Court of Pyinmana in Civil Execution Nos. 30, 31 and 32 of 1925.