

REVISIONAL CRIMINAL.

Before Mr. Justice LeRossignol and Mr. Justice Fforde.

Mussamat NAURATI—Petitioner,

versus

THE CROWN—Respondent.

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Feb. 24.

Criminal Revision No. 1150 of 1924

Criminal Procedure Code, Act V of 1898, section 4 (h), and section 198—Complaint—what it should contain—Whether Magistrate can charge accused with the offence of defamation, not specifically mentioned in the complaint—Indian Penal Code, 1860, section 500.

The essence of a complaint (as defined in section 4, clause (h) of the Criminal Procedure Code) is the statement of facts relied on as constituting an offence. It is sufficient that the complainant shall state the true facts in his own language, and it is for the Magistrate to apply the law to those facts.

Thus, where, on a complaint purporting to be made under sections 193 and 211 of the Indian Penal Code, the Magistrate after hearing the evidence framed a charge of defamation and convicted the petitioner under section 500.

Held that, provided the complainant personally satisfied the conditions of section 198 of the Criminal Procedure Code, the failure in his complaint to mention specifically an offence under section 500 of the Indian Penal Code did not restrict the Magistrate from taking cognizance under that section.

Piran Ditta v. Queen-Empress (1), followed.

Queen-Empress v. Deoki Nandan (2), *Bangaru Asari v. Emperor* (3), and *Chemom Garo v. Emperor* (4), dissented from.

Application for revision of the order of Lt.-Col. R. W. E. Knollys, Sessions Judge, Ambala, dated the 27th July 1924, affirming that of Khan Bahadur Sayad Bashir Hussain, Honorary Magistrate, 1st

(1) 23 P. R. (Cr.) 1895.

(3) (1908) I. L. R. 27 Mad. 61.

(2) (1887) I. L. R. 10 All. 39.

(4) (1902) I. L. R. 29 Cal. 415.

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Class, Kharar, District Ambala, dated the 11th July 1924, convicting the petitioner.

FAKIR CHAND, for Petitioner.

D. C. RALLI, for Government Advocate, for Respondent.

The order of Broadway, J., dated 15th November 1924, referring the case to a Division Bench.

The question involved in this case is whether a conviction under section 500, Indian Penal Code, founded on facts not stated in the complaint is permissible. Section 198, Criminal Procedure Code, enacts that “no Court shall take cognizance of an offence falling under * * * * * Chapter XXI of the Indian Penal Code * * * * * except upon a complaint made by some person aggrieved by such offence.”

It has been urged that the intention of the Legislature was to insist on the person aggrieved by the offence of defamation definitely stating that he was so aggrieved. In the present case certain allegations had been made in an *affidavit* filed by the petitioner in support of an application for transfer of certain cases in which she was interested and which were pending in the Court of the complainant in the present case. The complainant filed a written complaint referring to the fact that this *affidavit* containing false allegations had been made and asking the Court to take action against the petitioner under sections 193 and 211, Indian Penal Code. The complainant was examined under section 200, Criminal Procedure Code, but in his statement did not complain of having been defamed. Process was issued and the case was referred to an Honorary Magistrate, and it was when the complainant made his statement in the presence of the petitioner that the allegation that the statements were defamatory was first made. Reliance has been placed by Mr. Balwant Rai on *Queen-Empress v. Deoki Nandan* (1)—an authority which supports his contention.

The question is arguable, for it seems to me that all that is necessary for a complainant to do is to set out clearly the

facts of which he is complaining, leaving it to the Courts to decide what offence (if any) the facts constitute. On the other hand, section 198, Criminal Procedure Code, appears to demand something more than the complainant set out in the complaint in the present case. It would appear from the complaint that the complainant never contemplated a prosecution for defamation and had no intention of complaining of having been defamed. The point is of some interest and importance, and I therefore refer the matter to a Division Bench.

The judgment of the Court was delivered by—

LEROSSIGNOL J.—This revision petition arises out of a complaint that the petitioner, in support of an application for transfer of certain cases pending in the Court of the complainant who was a Magistrate, had made false allegations which injured the complainant. The complaint purported to be under sections 193 and 211, Indian Penal Code, but the Magistrate, after hearing the evidence, framed the charge of defamation, under section 500, Indian Penal Code, and convicted the petitioner under that section.

The contention maintained before us is that, inasmuch as the complainant did not complain in so many words of having been defamed, and did not mention section 500 in his complaint, the Magistrate was not competent, by reason of section 198, Criminal Procedure Code, to take cognizance of an offence of defamation and *Queen-Empress v. Deoki Nandan* (1) is relied upon by the petitioner. Now, in *Queen-Empress v. Deoki Nandan* (1) the complaint itself did not disclose any offence of defamation and the defamation was referred to only incidentally. In the decision in *Bangaru Asari v. Emperor* (2) the Court followed the decision in *Queen-Empress v. Deoki Nandan* (1) on the ground that before an accused can be convicted of an offence under section 498, Indian

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(1) (1887) I. L. R. 10 All. 39.

(2) (1903) I. L. R. 27 Mad. 61.

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Penal Code, there must be a complaint made by the husband, and that complaint must fall specifically within section 498 of the Code. In *Chemon Garo v. Emperor* (1) the Allahabad view was adopted.

With all respect we venture to dissent from the conclusion set forth in the above rulings which appears to us to beg the question "what is a complaint"? The Criminal Procedure Code does not presume the existence in the public of a knowledge of the technicalities of the law. In section 4, clause (h) of the Criminal Procedure Code "complaint" is defined as an allegation made to a Magistrate, with a view to his taking action, that some person has committed an offence. An offence is defined as being any act or omission made punishable by any law for the time being in force. Now, the complaint need not quote any section of the Indian Penal Code, but must contain a statement of the facts relied on as constituting the offence, and it is for the Magistrate to determine on these facts what offence has *prima facie* been committed, the nature of the charge will be determined by him. All that it is necessary for him to see is that the enquiry into the charge is within his competency, and that, in the case of certain offences, the complaint has been made by the proper person.

Now, the general rule is that a complaint may be made by anybody whether he be an aggrieved person or not. But section 198 modifies the general rule by providing that the offence of defamation shall not be taken cognizance of by any Court except upon a complaint made by a person aggrieved by the defamation. Similarly section 199 of that Code restricts the right of complaint in respect of certain offences affecting the institution of marriage, to the husband or his

agent for the time being.

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In *Piran Ditta v. Queen-Empress* (1) a Division Bench of the Punjab Chief Court held that, though the offence charged in the complaint was punishable under section 371 of the Indian Penal Code, the complaint as lodged was sufficient to support a conviction under section 498 of that Code as it had been made by the husband. In that judgment it is laid down that it is quite sufficient that the complainant shall state the true facts in his own language, and it is for the Magistrate to apply the law to those facts. If, in the opinion of the Magistrate, the offence disclosed falls under section 498 of the Indian Penal Code the Magistrate is at liberty to proceed and frame a charge under that section, provided the complainant satisfies the conditions of section 199 of the Criminal Procedure Code, whatever may have been the section of the Indian Penal Code recited in the complaint.

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With this view we find ourselves entirely in agreement. In this case moreover the facts are stronger than in any of the cases cited to us at the bar, for though the complainant did refer specifically to sections 211 and 193, Indian Penal Code, he complained that false statements and a false charge had been made against him which had caused him injury, and he asked the Court to take action under those sections or under any other section which the facts disclosed might justify.

We accordingly hold that the conviction of the petitioner was sound on the point of law referred and we remit the petition to the Single Bench.

N. F. E.