REVISIONAL CRIMINAL.

Before Sir Shadi Lal, Chief Justice, and Mr. Justice Agha Haidar.

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Jan. 26.

MUHAMMADA, Petitioner

versus

THE CROWN, Respondent.

Criminal Revision No. 601 of 1927.

Criminal Procedure Code, Act V of 1898, section 195 (1) (b)—"Proceedings in any Court"—meaning of—Report made to police against complainant and others—No action taken thereon against the complainant—Prosecution under section 211, Penal Code—whether complaint by Court necessary.

The accused made a report at a police station which implicated (*inter alia*) the petitioner R.B., against whom however no proceedings were taken by the police nor was he put upon his trial before any Magistrate.

Held, that clause (1) (*b*) of section 195 of the Criminal Procedure Code, did not apply to the prosecution of the accused by R.B., under section 211 of the Penal Code; the offence alleged thereunder not having been committed "*in or in relation to any proceedings in any Court*" within the meaning of the clause.

Kashi Ram v. *Emperor* (1), *Emperor* v. *Kashi Ram* (2), and *Tayebulla* v. *Emperor* (3), followed.

Brown v. *Ananda Lal Mullick* (4), referred to.

Emperor v. *Hardwar Pal* (5), and *Crown* v. *Gurditta* (6), dissented from.

Application for revision of the order of E. G. F. Abraham, Esquire, Sessions Judge, Ferozepore, dated the 21st March 1927, affirming that of Sardar Bahadur Bawa ***Bhag Singh, Honorary Magistrate, 1st class, Ferozepore, dated the 18th February 1927, convicting the Petitioner.***

(1) (1924) 82 I. C. 167.
(2) (1924) I. L. R. 46 All. 906.
(3) (1916) I. L. R. 43 Cal. 1152.
(4) (1917) I. L. R. 44 Cal. 650, 658.
(5) (1912) I. L. R. 34 All. 522.
(6) 19 P. R. (Cr.) 1917.

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NAND LAL, for Petitioner.

RAJ KRISHNA, for Government Advocate, for Respondent.

The order of Mr. Justice Tek Chand, dated 22nd July 1927, referring the case to a Division Bench.

Muhammada, petitioner, made a report at the Police station, Ferozepore, on the 26th of July 1925, that he was in the Ferozepore hospital on that night attending on his sister, who was an indoor patient there, when one Nihal Singh came into the compound with a *takwa* in his hand intending to murder his sister, that Nihal Singh was accompanied by Raushan Beg and Ahmad Din, who were the expectant heirs of his sister and who had instigated him to commit the crime, and that he was able to catch Nihal Singh alone, his companions having run away. The police after enquiry found that the story as given by Muhammada was false. They took no action against Raushan Beg or Ahmad Din but challaned Nihal Singh under the Arms Act for being in unlawful possession of the *takwa*. He was, however, acquitted by the Court.

On the 16th January 1926 Raushan Beg lodged a complaint under section 211, Indian Penal Code, against Muhammada for having made a false charge againt him. Muhammada was tried by the Magistrate, 1st class, Ferozepore, and found guilty under section 211 and sentenced to undergo rigorous imprisonment for four months and pay a fine of Rs. 100. His appeal to the Sessions Court having been unsuccessful, he has preferred a revision to this Court.

The first point taken on his behalf is that the learned Sessions Judge has not discussed the evidence on the record nor has he written a proper judgment

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in accordance with law and, therefore, the case should be sent back to him for redecision. There is no doubt that the discussion of the evidence in the judgment of the learned Sessions Judge is not as full as it might have been. I, however, see no reason to remand the case. I have allowed the petitioner's counsel to address me at length on the merits and to read to me the portions of the evidence on which he wishes to rely. After examining the evidence and considering counsel's arguments I am of opinion that the petitioner has been rightly convicted under section 211, Indian Penal Code. There was no justification for him to make a false charge against Raushan Beg and Ahmad Din and his sole object in making the report seems to have been to intentionally harrass and injure these persons who were the expectant heirs of his sister, and with whom they do not appear to have been on good terms.

It was next argued that the proceedings in this case were void *ab initio* and illegal, inasmuch as they were not initiated on a complaint in writing made by the Court which tried Nihal Singh as required by section 195 (*b*), Criminal Procedure Code. The learned Public Prosecutor replied that section 195 does not apply as the Police challaned Nihal Singh only and not Raushan Beg or Ahmad Din, and the case of the latter was never before any Court and, therefore, it cannot be said that so far as these persons are concerned the alleged offence was committed in, or in relation to, any proceedings in a Court. There is however, a Single Bench decision of the Chief Court reported as *The Crown* v. *Gurditta* (1) which fully supports the petitioner's contention.

(1) 19 P. R. (Cr.) 1917.

In that case the accused had made a report to the Police that seven persons had committed dacoity. The Police sent up five of those persons for trial but took no action against the other two, namely, Q. S. and A. S. Subsequently proceedings under section 211, Indian Penal Code, were started against the accused for having brought a false charge against Q. S. and A. S. A magisterial inquiry was held against the accused who was committed to the Sessions Court for trial for having made a false charge against Q. S. and A. S. It was held by Scott Smith J. that though Q. S. and A. S. were not proceeded against in Court, section 195 still applied as the matter had come up before the Court in connection with the same report made by the accused to the Police and thus the offence (if any) was committed in relation to a proceeding in a Court. As the prosecution of the accused under section 211 was not initiated with the sanction of or on the complaint of the Court concerned, the commitment was held to be illegal and was accordingly quashed. The learned Judge in his judgment based his decision on a Division Bench ruling of the Allahabad Court, *Hardwar Pal* v. *The King Emperor* (1). I have considered both these cases, and as at present advised, I feel grave doubts as to the soundness of the view taken therein. As has already been pointed out, the Court which had tried Nihal Singh was not concerned with the allegations made by the petitioner in his report to the Police against Ahmad Din and Raushan Beg. These persons had not been sent up to take their trial before the Court and I fail to see how that Court could initiate proceedings under section 211 with reference to the alleged false charge against them who were

(1) (1912) I. L. R. 34 All. 522.

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never before it. In taking this view, I feel fortified by a later decision by another Division Bench of the Allahabad Court in *Kashi Ram* v. *Emperor* (1), where *Hardwar Pal* v. *Emperor* (2) was dissented from. The point was raised before the Calcutta High Court in *Brown* v. *Ananda Lal Mullick* (3), but was not expressly decided, though there are indications in the judgment that the learned Judges were inclined to doubt the soundness of the decision in Hardwar Pal's case. As the question is one of considerable importance and arises frequently, I think it is necessary to have an authoritative pronouncement by a Division Bench of this Court on it.

I, therefore, refer the case to a Division Bench for decision of this point, which is the only point left undecided.

The judgment of the Division Bench was delivered by :—

AGHA HAIDAR J.— A reference was made to a Division Bench by a learned Single Judge of this Court on the 22nd of July, 1927, under the following circumstances :—

A report was made to the Police by one Muhammada, the accused in the present case, to the effect that his sister *Mussammat* Bago, who was a widow and had some property, was an indoor patient in the Ferozepore hospital, that one Nihal Singh had trespassed into the compound of the said hospital in order to murder the said lady, that Nihal Singh when caught by the informant invoked the aid of two of his accomplices, namely, Raushan Beg and his son

(1) (1924) 82 I. C. 167. (2) (1912) I. L. R. 34 All. 522.
(3) (1917) I. L. R. 44 Cal. 650, 658.

Ahmad Din, that the informant identified these two men by their speech, and that they, being the reversioners of *Mussammat* Bago's estate, would have directly benefited by her death. The Police made an investigation but did not feel satisfied as regards the complicity of Raushan Beg and Ahmad Din and so no action was taken against them. Nihal Singh, however, was charged under section 19 of the Indian Arms Act (XI of 1878) and tried by a Magistrate. On the 17th of November, 1925, the Magistrate acquitted Nihal Singh, observing at the conclusion of his judgment that the case seemed to be a frivolous one which had been initiated by Muhammada and *Mussammat* Bago in order to implicate Raushan Beg and Ahmad Din who were the reversioners and heirs of *Mussammat* Bago.

On the 16th of January, 1926, Raushan Beg filed a complaint under section 211/500 of the Indian Penal Code in the Court of a Magistrate. This complaint ended in the conviction of Muhammada under section 211, Indian Penal Code.

Muhammada appealed to the Sessions Judge, Ferozepore, who, however, dismissed his appeal. An application for revision of the order of the Sessions Judge was made in this Court, and the case came on for hearing before a learned Single Judge, who went through the evidence on the record and arrived at the conclusion that the conviction of Muhammada under section 211 of the Indian Penal Code was correct.

A point of law was, however, raised before him to the effect that the complaint which Raushan Beg had made direct to the Magistrate was incompetent in that the case was covered by section 195 (1) (*b*) of the Criminal Procedure Code and, therefore, a complaint in writing should have been made by the Court

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which tried the case against Nihal Singh or by some other Court to which such Court was subordinate, and that, therefore, the whole proceedings were null and void. The learned Judge of this Court entertained some doubt as to the correctness of a certain decision of the Punjab Chief Court and, therefore, referred the case to a larger Bench.

The portion of section 195 of the Criminal Procedure Code relevant to the present reference is as follows :—

"No Court shall take cognizance—

* * * * * *

(*b*) of any offence punishable under sections * * * 211 * * of the same Code, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing, of such Court, or of some other Court to which such Court is subordinate ;

* * * * * *"

The case in *The Crown* v. *Gurditta* (1) is in favour of the applicant. This was, however, a judgment by a Single Judge who followed *Emperor* v. *Hardwar Pal* (2). Now, we have to see whether Hardwar Pal's case was rightly decided. In that case a report was made by one H. at a Police Station against several persons, one of whom was S., charging them with rioting and voluntarily causing hurt. The Police made an investigation and sent up several persons for trial but no action was taken against S. Some of the persons charged were convicted by the Magistrate but were acquitted by the Sessions Judge. Thereupon S. filed a complaint in

(1) 19 P. R. (Cr.) 1917. (2) (1912) I. L. R. 34 All. 522.

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the Court of the Magistrate charging H. with having made a false report to the Police implicating him (S.) in the offence. The matter came up before a Division Bench which held that, as there was considerable relation between the first report and the proceeding in Court, the latter being the result of the former, the alleged offence with which H. was charged was committed in relation to a proceeding in Court. They further held that the report led to the Police inquiry and the Police inquiry led to the proceedings in Court. And proceeding on this line of reasoning the learned Judges finally held that the sanction of the Court under section 195 (1) (*b*) was necessary and in the absence of such sanction they quashed the proceedings taken by S. against H. in the Court of the Magistrate.

The matter once again came before a Division Bench of the Allahabad High Court where two learned Judges in *Emperor* v. *Kashi Ram and others* (1) threw considerable doubt upon the correctness of *Emperor* v. *Hardwar Pal* (2). In this case the learned Judges observed as follows:—

"In *Emperor* v. *Hardwar Pal* (2) a charge was made against several people including one S., but S. was never charged in Court. S. was not put upon his trial and no proceedings were taken against him. The other people were, and the *ratio decidendi* in *Emperor* v. *Hardwar Pal* (2), is that the charge against S. amounted to a charge in Court because Court proceedings were taken against somebody else. In this respect we are unable to agree with *Emperor* v. *Hardwar Pal*" (2).

(1) (1924) I. L. R. 46 All. 906. (2) (1912) I. L. R. 34 All. 522.

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The learned Judges then proceeded to lay down the following formula for deciding the question as to "where a report to the police stops and the charge before the Magistrate begins" :—

"If the complainant confines himself to reporting what he knows of the facts, stating his suspicions, and leaving the matter to be further investigated by the police, or leaving the police to take such course as they think right in the performance of their duty, he may be making a report but he is not making a charge. But if he takes the further step, without waiting for any official investigation, of definitely alleging his belief in the guilt of a specified person, and his desire that the specified person be proceeded against in Court, that act of his, whether verbal or written, if made to an officer of the law authorised to initiate proceedings based upon the complainant's statement, whether amounting to an expression of the complainant's belief in the guilt of the specified persons, or his desire that Court proceedings be taken against him, amounts to making a charge".

This being the position, the authority of *The Crown* v. *Gurditta* (1) may be taken to have been considerably shaken, in that the case on which it was founded has been definitely dissented from by the Allahabad High Court itself.

There is another case *Tayebulla* v. *Emperor* (2) were Mookerjee and Sheepshanks JJ. held that no sanction was necessary under section 195 of the Criminal Procedure Code to prosecute an informant under section 211 of the Indian Penal Code when a false charge had been made by him only to the police.

(1) 1) P. R. (Cr.) 1917. (2) (1916) I. L. R. 43 Cal. 1152.

Brown v. *Ananda Lal Mullick* (1) approves of the case in *Tayebulla* v. *Emperor* (2) and the learned Chief Justice, who delivered the principal judgment of the Court, refused to express an opinion as to whether the case in *Emperor* v. *Hardwar Pal* (3) was rightly or wrongly decided.

We prefer to follow the law as laid down in *Kashi Ram* v. *Emperor* (4). Raushan Beg was never charged in any Court, nor was he ever put upon his trial before any Magistrate, nor were any proceedings taken against him before the Court in which Nihal Singh was involved. This being so, it cannot be said that the offence under section 211 of the Indian Penal Code, with which Muhammada, the applicant, had been charged, was an offence which was committed in or in relation to any proceeding in Court. This being our view, it was not necessary that the present prosecution should have been initiated on the complaint in writing of the Magistrate who tried and disposed of Nihal Singh's case. Under these circumstances the objection as to the maintainability of the present complaint fails.

The case having been heard on the merits by the learned referring Judge and the only question that had been referred to us for consideration having been decided against the applicant, the result is that the application for revision fails and is dismissed.

N. F. E.

Revision dismissed.

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(1) (1917) I. L. R. 44 Cal. 650.
(2) (1916) I. L. R. 43 Cal. 1152.
(3) (1912) I. L. R. 34 All. 522.
(4) (1924) 82 I. C. 167.