REVISIONAL CRIMINAL.

Before Mr. Justice Tek Chand.

1927

July 16.

SHANKAR LAL Petitioner

versus

THE CROWN Respondent.

Criminal Revision No. 650 of 1927.

Criminal Procedure Code, Act V of 1898, sections 4 (h), 190 (1) (b), 200—cognizance of non-cognizable offence by Magistrate upon a report of a Police officer—without examining the officer on oath.

Held, that Magistrates mentioned in section 190 of the Code of Criminal Procedure are entitled to take cognizance of non-cognizable offences upon a report made in writing by a police officer without examining the officer on oath.

Public Prosecutor v. *Ratnavelu Chetty* (1), and *Emperor* v. *Ghulam Hussain* (2), followed.

King-Emperor v. *Sada* (3), referred to.

Dilan Singh v. *Emperor* (4), distinguished.

In re Peru Mal Naick (5), dissented from.

Application for revision of the order of D. Johnstone, Esquire, Sessions Judge, Delhi, dated the 16th March 1927, modifying that of E. S. Lewis, Esquire, Magistrate, 1st class, Delhi, dated the 2nd February 1927, convicting the petitioner.

DUNI CHAND, for Petitioner.

D. R. SAWHNEY, Public Prosecutor, for Respondent.

JUDGMENT.

TEK CHAND J. TEK CHAND J.—The petitioner Shankar Lal was tried by a Magistrate of the 1st Class, Delhi, for an offence under sections 186 and 504, Indian Penal Code. The charge under section 186 was held to be

(1) (1926) I.L.R. 49 Mad. 525 (F.B.).
(2) (1924) 6 Lah. L. J. 606.
(3) (1902) I.L.R. 26 Bom. 15 (F.B.).
(4) (1913) I. L. R. 40 Cal. 360.
(5) (1925) 90 I. C. 398.

1927

SHANKAR LAL
v.
THE CROWN.

TEK CHAND J.

unproved but he was found guilty under section 504 and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500. On appeal the learned Sessions Judge maintained the conviction but reduced the sentence to one of fine of Rs. 500 only.

The petitioner has preferred a petition for revision to this Court, and the case has been fully argued by Mr. Duni Chand on his behalf and Mr. Sawhney for the Crown. Mr. Duni Chand has assailed the judgment of the learned Sessions Judge on three grounds. Firstly, he contends that the offence under section 504 is a non-cognizable one and that proceedings under it could only have been initiated on a formal complaint filed by Head Constable Muhammad Amin who is the person alleged to have been "intentionally insulted with intent to promote a breach of the peace." He argues that as in the present case there was no such complaint, the entire proceedings were illegal, if not void *ab initio*, and for this reason, and also because the complainant was not examined in accordance with the provisions of section 200, Criminal Procedure Code, the conviction must be set aside. Secondly, it is urged, that the insulting words which the petitioner is alleged to have used and which are the foundation of the charge under section 504 ought to have been specifically mentioned in the charge sheet and that this not having been done, the proceedings were materially irregular. Thirdly, it is argued that the evidence for the prosecution does not support the finding of the learned Sessions Judge as to the abusive language alleged to have been used.

In support of the first contention Mr. Duni Chand has relied upon the Full Bench decision of the Bombay

1927

SHANKAR LAL
v.
THE CROWN.

TEK CHAND J.

High Court in *King Emperor* v. *Sada* (1) and a Division Bench judgment of the Madras Court *In re Peru Mal Naick* (2) He has also invited my attention to *Dilan Singh* v. *Emperor* (3). The last of these rulings, however, does not support the contention of the learned counsel. In that case it was held that a conviction by the Court of Session cannot be set aside on revision simply because there was a defect in the initiation of the proceedings in the Commitment Court or because there was some irregularity in the commitment proceedings. It was specifically ruled that section 537 of the Code of Criminal Procedure would cure such a defect. According to this ruling, therefore, even if there was any technical defect in the initiation of the proceedings against the petitioner it would not vitiate the entire proceedings but would be cured by section 537, Criminal Procedure Code. The second ruling *In re Peru Mal Naick* (2) no doubt supports the learned counsel's contention; but it was considered and specifically overruled by the Madras Court in the Full Bench decision *The Public Prosecutor* v. *Ratnavelu Chetty* (4). In that case it was held that under sections 190 (1) (*b*) and 200 of the Criminal Procedure Code, Magistrates mentioned in section 190 are entitled to take cognizance of non-cognizable offences upon a report made in writing by a police officer without examining the officer upon oath. The question was considered at considerable length by the Full Bench and after a review of the authorities the learned Judges held that in non-cognizable offences a report in writing by a police officer was sufficient for the initiation of proceedings by a Magistrate. The Bombay Full Bench decision in

(1) (1902) I.L.R. 26 Bom. 150 (F.B.). (3) (1913) I.L.R. 40 Cal. 360.
(2) (1925) 90 I. C. 398. (4) (1926) I.L.R. 49 Mad. 525 (F.B.).

King Emperor v. *Sada* (1) was discussed and was found not to lay down any rule contrary to what was laid down by the Madras Court. The view taken by the Madras Court is substantially supported by a Division Bench decision of this Court in *Emperor* v. *Ghulam Husain* (2) where the learned Chief Justice and leRossignol J., after considering the definition of "complaint" as given in section 4 (*h*) of the Code of Criminal Procedure and the provisions of section 190, held that there was nothing illegal or irregular in a Magistrate taking cognizance of a non-cognizable offence on a report in writing made by a police officer. Having regard to these authorities, which have my respectful concurrence, I am of opinion that there is no force in the first point raised by the learned counsel and his contention in this behalf must fail.

The second question to be decided is whether there is any defect in the frame of the charge which would vitiate the conviction. On this point again, I am unable to agree with the learned counsel for the petitioner. The Head Constable Muhammad Amin was examined on oath as a witness at the trial and in his statement he has given in detail the alleged abusive language to which he took exception. These words were also mentioned in the report of the police on which the proceedings were started by the Magistrate. The accused was, therefore, perfectly aware of the words complained of, for the alleged use of which he was being tried. The failure of the Magistrate to specifically mention the objectionable words in the charge has caused no prejudice to the petitioner. It is conceded that he was not taken by surprise in his defence and there is no reason to suppose that he was

(1) (1902) I. L. R. 26 Bom. 150 (F.B.). (2) (1924) 6 Lah. L. J. 606.

1927

SHANKAR LAL v. THE CROWN.

TEK CHAND J.

in any way misled by this technical defect in the frame of charge. I, therefore, find no substance in the second contention and accordingly overrule it.

[*The remainder of the judgment is not required for the purpose of this report.*—ED.]

A. N. C.

Revision accepted in part.

PRIVY COUNCIL.

Before Lord Sinha, Lord Blanesburgh and Sir John Wallis.

1927

July 26.

DELHI CLOTH AND GENERAL MILLS CO., LTD. Petitioners

versus

INCOME-TAX COMMISSIONER, DELHI AND ANOTHER—Respondents.

Privy Council Special Appeal of 1927.

(Lahore High Court, Miscellaneous Cases Nos. 551, 552 of 1926.)

Indian Income-tax Act, XI of 1922 (as amended by Act XXIV of 1926), section 66A (2)—Case stated by Commissioner—Decision of High Court—Appeal to Privy Council—Competence of Appeal—Certificate.

The right of appeal to the Privy Council from a decision of the High Court upon a case stated under section 66 of the Indian Income-tax Act, 1922, is given by sub-section 2 of section 66A (added by Act XXIV of 1926) only in a case which the High Court certifies to be a fit one for such an appeal. The High Court is justified in refusing a certificate in a case which in its view does not raise any question of such importance as would warrant a certificate under section 109 (*c*) of the Code of Civil Procedure, 1908. It is not sufficient that the requirements of section 110 of that Code are satisfied.

No right of appeal arises where the decision of the High Court was before April 1, 1926, the date when Act XXIV of 1926 came into operation.

Special leave to appeal refused.