CRIMINAL REVISION.

Before Mr. Justice Bagnley.

1937

Dec. 23.

THE KING *v.* MA BAN GYI.*

False charge of an offence to police—Refusal of police to prosecute—Offence charged punishable with death or transportation—Trial of person making false charge by magistrate—Institution of criminal proceedings—Causing criminal proceedings to be instituted—Trial of offender by Sessions Court—Penal Code, s. 211—Offence falling under first part and offence falling under second part of s. 211—Criminal Procedure Code, s. 190.

S. 211 of the Penal Code refers to three matters : (1) falsely charging a person, (2) instituting criminal proceedings against that person, (3) causing to be instituted criminal proceedings against that person. If an offender has merely falsely charged a person of any offence whatsoever by making a report to the police, and the police refuse to initiate proceedings, then what has been done is merely that a false charge has been made. The offence comes within the first part of s. 211 punishable with two years' imprisonment or fine or both, and the case is triable by a first class magistrate.

If the offender files a complaint before a magistrate under s. 190 of the Criminal Procedure Code he has instituted criminal proceedings ; if on the offender's report the police send up a case for trial he has caused criminal proceedings to be instituted within the meaning of s. 211 of the Penal Code.

If criminal proceedings have been instituted or caused to be instituted by the offender before a Court and his offence comes under the second part of s. 211 of the Penal Code, he is liable to a heavier punishment as provided in the section, and further the case can only be tried by a Court of Session if he has falsely accused his opponent with an offence punishable with death or transportation for life.

A woman reported to the police that a certain man had committed the offence of rape on her. The police investigated the case and found it to be false. The woman was prosecuted for an offence under s. 211 of the Penal Code before a first class magistrate who convicted her and imposed a fine. *Held* that the offence came under the first part of s. 211 and the trial and the sentence of fine by the magistrate were legal.

Empress v. *Parahu*, I.L.R. 3 All. 598 ; *Empress* v. *Pitam Rai*, I.L.R. 5 All. 215 ; *Queen-Empress* v. *Bisheshar*, I.L.R. 16 All. 134 ; *Queen-Empress* v. *Karim Buksh*, I.L.R. 14 Cal. 633, followed.

Emperor v. *Johri*, 33 Cr. L.J. 256 ; *Karim Buksh* v. *Queen-Empress*, I.L.R. 17 Cal. 574 ; *Parmeshar Lal* v. *King-Emperor*, I.L.R. 4 Pat. 472 ; *Queen-Empress* v. *Nanjunda Rao*, I.L.R. 20 Mad. 79, dissented from.

Lambert (Government Advocate) for the Crown.

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* Criminal Revision No. 731A of 1937 from the order of the Subdivisional Magistrate of Kanbalu in Criminal Trial No. 72 of 1937.

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BAGULEY, J.—Ma Ban Gyi has been convicted under section 211, Penal Code, and ordered to pay a fine of Rs. 30, or, in default, one month's rigorous imprisonment, by the Subdivisional Magistrate, Kanbalu, who has first-class powers. The case has been sent for by the office with a view to examining the legality of the sentence, and it has in consequence come before me.

The facts of the case are that Ma Ban Gyi reported to the police that Tun Gyaw had committed the offence of rape on her. The police investigated the case, and, finding it to be false, the prosecution of Ma Ban Gyi under section 211 was ordered, and the case was tried, as has been mentioned, by a first-class Magistrate.

Offences under section 211 fall under three categories. Anyone who with intent to injure any person institutes or causes to be instituted any criminal proceedings or falsely charges any person with having committed an offence is punishable with two years' imprisonment, or fine or both, and the case is triable by a first-class Magistrate. If such criminal proceeding be instituted on a false charge of an offence punishable with imprisonment for seven years or upwards (an offence coming under the second part of section 211), the offender is liable to imprisonment up to seven years, and a fine in addition, and the case can only be tried by a Court of Session or a Magistrate of the first-class, and if the criminal proceeding is instituted on a false charge of an offence punishable with death or transportation for life, the case can only be tried by a Court of Session. In connection with the present case the charge was under section 376, Penal Code. This being punishable with transportation for life, if the case came under the second part of section 211, the Magistrate could not deal with it himself, but if it came under the first part of section 211, for which the maximum punishment is rigorous imprisonment for

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two years, then the Magistrate had power to deal with the case, and the punishment he has inflicted is legal.

In my view, if the offender has merely falsely charged a person of any offence whatsoever, the case is triable by a Magistrate, and the maximum sentence is two years, so that if Ma Ban Gyi instituted, or caused to be instituted, criminal proceeding charging Tun Gyaw with the offence of rape, then her offence comes under the second part of section 211, and is triable only by a Court of Session : if, on the other hand, she merely falsely charged him with having committed the offence of rape, then the Magistrate had power to deal with the case, and the sentence which he passed was legal.

For authority on this point there seems to be none in Burma, and two views have been taken by High Courts in India. Allahabad begins with two single Judge rulings : *Empress* v. *Pitam Rai* (1) and *Empress* v. *Parahu* (2), in which it was held that, if a complaint is made to the police that someone had committed an offence, and the case is struck off by the police and never gets to Court, then the person who had made that false charge has merely "falsely charged" the person against whom he reported within the meaning of the first part of section 211. In *Queen-Empress* v. *Karim Buksh* (3), a Bench of the High Court of Calcutta consisting of Comer Petheram C.J. and Ghose J., the same view was taken, and the cases of *Pitam Rai* (1) and *Parahu* (2) were followed.

Fifteen months afterwards, however, appeared the case of *Karim Buksh* v. *Queen-Empress* (4). This case, despite its name, appears to be quite independent of the previous Calcutta case, and was started by a report of a Sessions Judge, in which he stated that

(1) (1882) I.L.R. 5 All. 215.
(2) (1883) I.L.R. 5 All. 598.
(3) (1887) I.L.R. 14 Cal. 633.
(4) (1888) I.L.R. 17 Cal. 574.

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Queen-Empress v. *Karim Buksh* (1) was opposed to the practice current in the mofussil Courts for many years : so a Full Bench of five Judges, including the Chief Justice, considered the matter. The judgment of the Bench was delivered by Wilson J. and it was decided that a man who sets the criminal law in motion by making a false charge to the police of a cognizable offence institutes criminal proceedings within the meaning of section 211 of the Indian Penal Code, and that if the offence fell within the description in the latter part of the section, he is liable to the punishment there provided. In the judgment itself no previous case of any kind was referred to. The learned Judge pointed out that there are two ways by which a person aggrieved can put the criminal law in motion : he may make a charge to the police, or make a complaint, and it is stated that, whichever of these methods is adopted, the thing done by the accused is the same, although they are given different names, and in each case the steps that follow are governed by the Criminal Procedure Code. It was pointed out that the argument arises that the Legislature must have meant different things when it spoke of "instituting proceedings" and "making a charge", and that only what fell within the former phrase was within the latter part of the section. The learned Judge said that he agreed in this reasoning in one sense and not in another. After that his reasoning is not very clear to me, and he says he did not suppose that the Legislature meant the phrases to be mutually exclusive in meaning, so that the instituting of criminal proceedings must be by something which is not a charge, and a charge must be something which is not the institution of criminal proceedings. With respect, it seems to me that this argument breaks down,

(1) (1887) I.L.R. 14 Cal. 633.

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because the learned Judge has only envisaged two things, namely, "making a charge" and "instituting criminal proceedings", whereas section 211 deals with the third possibility, because it makes punishable under the first part of the section three things, namely, "instituting criminal proceedings", "causing to be instituted criminal proceedings" and "falsely charging." An argument which might be satisfactory when applied to two things is not necessarily satisfactory when three things are envisaged.

Unfortunately, however, in my view, this ruling has been followed in *Queen-Empress* v. *Nanjunda Rau* (1), where, again, only "institution of criminal proceedings" seems to be referred to, and not "causing of criminal proceedings to be instituted." In *Parmeshwar Lal* v. *King-Emperor* (2), in which no reasoning is given, it is merely stated that *Karim Buksh*'s case (3) contained the correct statement of the law, notwithstanding the authority of *Queen-Empress* v. *Bisheshar* (4).

Allahabad, however, in its official reports still keeps to its original view. In 1893 this point was again raised, and in the reference the cases of *Pitam Rai* (5), *Parahu* (6) and *Queen-Empress* v. *Karim Buksh* (7) were mentioned on the one side, and the case of *Karim Buksh* v. *Queen-Empress* (3) was mentioned on the other side. The reference was laid before a bench, and without further discussion the bench adhered to the earlier rulings of its own Court. It is true that in an unofficially reported case a bench of this Court has taken the opposite view [*Emperor* v. *Johri* (8)]. The bench of two Judges preferred to

(1) (1896) I.L.R. 20 Mad. 79.
(2) (1925) I.L.R. 4 Pat. 472.
(3) (1888) I.L.R. 17 Cal. 574.
(4) (1893) I.L.R. 16 All. 134.
(5) (1882) I.L.R. 5 All. 215.
(6) (1883) I.L.R. 5 All. 598.
(7) (1887) I.L.R. 14 Cal. 633.
(8) 33 Cr. L.J. 256.

follow *Karim Buksh*'s case (1), in preference to the other bench ruling of its own Court. As this case has not been reported in the official reports at all, I take it that the official view of the Allahabad High Court is still that which was given in *Bisheshar*'s case (2).

The Bombay High Court has, it would seem, not yet published any ruling on this point. The question was adverted to in *Imperatrix* v. *Jijibhai Govind* (3), and on page 600 the rival views expressed in *Karim Buksh*'s case (1) and *Bisheshar*'s case (2) were mentioned, and it was stated that there has been no ruling on the point of the Bombay High Court, and that it was not necessary to decide it in that case.

In my opinion, the proper view is that of the Allahabad High Court. Section 211, as I have said, refers to three matters: falsely charging a person, instituting criminal proceedings against that person, and causing to be instituted criminal proceedings against that person. "Criminal proceedings" are not defined in the Penal Code, nor in the Code of Criminal Procedure. Section 4 (*m*) of the Code of Criminal Procedure defines "Judicial proceedings" as including any proceeding in the course of which evidence is or may be legally taken on oath: so, no investigation by the police can be a judicial proceeding, although it is a criminal matter. However, progressing further through the Criminal Procedure Code, we come at length to Part VI which refers to "Proceedings in Prosecutions", and a little further on, above section 190 we get the cross-heading "Conditions requisite for Initiation of Proceedings." These proceedings, of course, are enquiry proceedings or trials, but they are certainly criminal proceedings as well, and in my opinion the criminal proceedings referred to in

(1) (1888) I.L.R. 17 Cal. 574. (2) (1893) I.L.R. 16 All. 134.
(3) (1910) I.L.R. 22 Bom. 596.

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section 211 must be regarded as proceedings before a Magistrate. Taking this view, the section can very easily be applied. If a man wishes another man to be dealt with by the Courts there are two courses open to him : he can file a complaint to a Magistrate, or he can report to the police. If he files a complaint under section 190, he is initiating criminal proceedings, as to that there can be no possible doubt. If he makes a report to the police, and the police send the man up for trial, also under section 190, then criminal proceedings have been instituted against a person, and the man who has set the police in motion has caused those criminal proceedings to be instituted. If, however, the police refuse to initiate proceedings, then what has been done is merely that a false charge has been made.

The scope of the section can then easily be grasped. A man who makes a false charge, which fails to result in any proceedings before a Magistrate, owing to his clumsiness or for some similar reason, is saved from himself to a certain extent by the action of the police in throwing out the case, and he has merely " falsely charged "; he has neither initiated criminal proceedings nor caused them to be initiated. If, owing to his greater skill, he has succeeded in getting the police to arrest his enemy and place him before a Court, then his greater skill has succeeded in involving himself perhaps in an offence for which he can be more heavily punished, because he would then have caused criminal proceedings to be instituted. If he had gone directly to the Magistrate with the idea that the Magistrate will harass his enemy by summoning him to Court, then he has " instituted criminal proceedings " himself, and the annoyance or dishonour which he has placed on his enemy has again made him liable to heavier punishment.

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This view of the matter gives a separate and definite meaning to each one of those three things envisaged by section 211 ; and, with respect, if the view taken in *Karim Buksh* v. *Queen-Empress* (1) is taken, one is left with a kind of uncertainty, as in the judgment only two of the three possibilities are dealt with ; whereas the view which I take seems to me to be clear and defines the three possibilities referred to in the section, each covering a totally different state of affairs.

Taking the view that I take, Ma Ban Gyi only "falsely charged" Tun Gyaw : her offence, therefore, came under the first part of section 211, and she could be legally tried by a Magistrate of the first-class, and the sentence of fine was a legal sentence. There is therefore no need to interfere in these proceedings. With these remarks the record will be returned.

CIVIL REVISION.

Before Mr. Justice Mosely, and Mr. Justice Dunkley.

MA HLA MRA KHINE
v.
MA HLA KRA PRU.*

1937

Dec. 21.

Income-tax returns and statements, confidential character of—Assessee's right to obtain certified copies—Civil Court's order to assessee to obtain and file copies in Court—Civil Procedure Code, O. 11, r. 14—Inadmissibility of copies in evidence—Burma Income-tax Act, s. 54.

The object of s. 54 of the Burma Income-tax Act is to make the returns furnished by the assessee confidential as between the assessee and the Income-tax Department, and against the whole world except for certain limited purposes provided by the section itself. It may be that the assessee has a right to obtain certified copies of those returns for his own purpose, but a Court of law, purporting to act under Order 11, r. 14 of the Civil Procedure Code, cannot compel the assessee who is a party to a suit before it to apply to the Income-tax Office for certified copies of his returns or of statements before the Income-tax Officer, and to file them in Court. To do so would be an

(1) (1888) I.L.R. 17 Cal. 574.

* Civil Revision No. 142 of 1937 from the order of the Assistant District Court of Akyab in Civil Reg. Suit No. 2 of 1936.