REVISIONAL CRIMINAL.

Before Young C. J.

BRAHM DATT (CONVICT) Petitioner

versus

THE CROWN—Respondent.

1934

May 11.

Criminal Revision No. 1366 of 1933.

Criminal Procedure Code, Act V of 1898, Sections 4 (h), *476, 537: Complaint by Tribunal against approver for perjury—in respect of alternative statements before a Magistrate and the Tribunal—Irregularity in heading of the complaint—whether curable—further whether complaint by Magistrate was also necessary.*

The petitioner B. D. was made an approver in the Lahore Conspiracy Case and gave evidence at the trial before the Special Tribunal. He had previously made a statement under section 164, Criminal Procedure Code, before a Magistrate. The Tribunal after finishing the hearing of the case recorded a finding under section 476, Criminal Procedure Code, that an offence under section 193, Indian Penal Code, appeared to have been committed by B. D. either before them or in the statement under section 164 and that a complaint thereof in writing be made forthwith and forwarded to the District Magistrate, Lahore, after obtaining the sanction of the High Court under section 339 (3), Criminal Procedure Code. The complaint was prepared accordingly and eventually after the sanction was obtained reached the District Magistrate. The complaint instead of being addressed to the District Magistrate, Lahore, was erroneously given the heading 'In the High Court of Judicature at Lahore,' and it was contended that this was not a 'complaint' within the meaning of section 4 (*h*) of the Code as it was not made to a 'Magistrate' and that sub-clause (*b*) having been deleted from section 537 by the Amending Act, XVIII of 1923, this was no longer an irregularity, curable by that section.

Held, that the purely technical irregularity in the heading of the complaint can be cured under section 537 (*a*) of the Criminal Procedure Code notwithstanding the repeal of

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clause (*b*) of the section which had no application to irregularities in the complaint but referred to irregularities in the actual proceedings and became unnecessary, when prosecutions on private complaints were abolished.

It having also been contended that the prosecution being in the alternative in respect of two statements, one before a Magistrate and the other in the Tribunal, it was necessary to file a complaint both from the Tribunal and from the Court of the Magistrate.

Held, that the statement recorded by the Magistrate under section 164, being from the point of view of the Tribunal a statement in relation to a proceeding in that Court within the meaning of section 476, the Tribunal had jurisdiction under this section to hold an enquiry, record a finding and make a complaint both as regards the statement in its own Court and the statement before the Magistrate.

In re Athi Ambalagaran (1), relied upon.

Emperor v. *Purshottam Ishwar* (2), distinguished.

Petition for revision of the order of Mr. G. S. Mongia, Additional Sessions Judge, Lahore, dated 30th August, 1933, modifying that of Mr. C. H. Disney, Magistrate, 1st Class, Lahore, dated 13th March, 1933, convicting the petitioner.

DEV RAJ SAWHNEY, M. L. WHIG and HARNAM SINGH, for Petitioner.

R. C. SONI, for Government Advocate, for Respondent.

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YOUNG C. J.—This is an application for revision from the decision of the learned Additional Sessions Judge of Lahore.

Brahm Datt has been convicted and sentenced under section 193, Indian Penal Code. He was originally arrested in connection with the Lahore Conspiracy Case. He was made an approver and tender-

(1) (1932) I. L. R. 55 Mad. 536. (2) (1921) I. L. R. 45 Bom. 834 (F.B.).

ed a pardon. He made a statement under section 164 in the month of June, 1929. Eventually before the Special Tribunal appointed for the purpose of trying the Lahore Conspiracy Case he gave evidence. The Tribunal came to the conclusion that Brahm Datt had committed perjury either before them or in his statement under section 164. On the 7th of October, 1930, the Tribunal finished the hearing of the case and passed an order on that date which is as follows :—

" We are of opinion that it is expedient in the interests of justice that an enquiry should be made into an offence under section 193 of the Indian Penal Code, which appears to have been committed in relation to a proceeding in this Court by Brahm Datt, *Misra*, and we hereby record a finding to that effect under section 476 of the Criminal Procedure Code and make a complaint thereof in writing and forward the same to the District Magistrate of Lahore, provided that the said complaint shall not be forwarded to the said Magistrate unless and until the prosecution of Brahm Datt, *Misra*, for the said offence of giving false evidence receives the sanction of the High Court, as required by sub-section (3) of section 339 of the Code of Criminal Procedure.

" Pending the orders of the High Court Brahm Datt, *Misra*, shall remain in the custody of the District Magistrate, Lahore, who may release him on his furnishing security to the satisfaction of the District Magistrate to appear before him at such time and place as he may require.

" Let a copy of this order be sent to the District Magistrate, Lahore, and a copy be given to the Prosecutor."

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In this order the Tribunal follows the procedure laid down under section 476, Criminal Procedure Code. They purported in this order to record a finding and make a complaint in writing and forward the same to the District Magistrate of Lahore. The complaint was to be held up until the necessary sanction of the High Court should be obtained to the prosecution of an approver. The learned District Magistrate also was given authority to release Brahm Datt on bail. On the same day a complaint was drafted and signed by the three learned members of the Tribunal accusing Brahm Datt of having committed perjury. This complaint was sent to the High Court on the application for the necessary sanction for the prosecution of an approver and eventually, after that sanction was obtained, reached the District Magistrate.

The first point taken in this application for revision is that this complaint is not a complaint within the meaning of section 4 (*h*) of the Criminal Procedure Code. Section 4 (*h*) reads as follows:—" Complaint means the allegations made orally or in writing to a Magistrate....." It is contended that this complaint which has the heading ' In the High Court of Judicature at Lahore ' cannot be an allegation made in writing to a Magistrate. On the face of it it is made to the High Court. In my opinion there can be no doubt that according to the order of the Tribunal itself the complaint was ordered to be made to the Magistrate and meant to be made to the Magistrate. By some oversight this heading was put on the document. This is an error and a mere irregularity. In the ordinary course an irregularity may be cured by section 537, Criminal Procedure Code, which enacts that " no finding, sentence or order passed by

a Court of competent jurisdiction shall be reversed on account of any error, omission or irregularity in the complaint." It has, however, been contended by learned counsel for the applicant that section 537 (*a*) does not apply, this being a prosecution in accordance with the procedure laid down in section 476 and section 195, sub-clause (*b*) of the Criminal Procedure Code. There was in the old Code of Criminal Procedure a special sub-section dealing with this. It was as follows :—

" Of the want of or any irregularity in any sanction required by section 195, or any irregularity in proceedings taken under section 476."

By an amendment in the Criminal Procedure Code in 1923 this sub-section was omitted. It has, therefore, been argued that nothing now can cure an irregularity either concerning the sanction required by section 195 or any irregularity in proceedings taken under section 476. Under the old Criminal Procedure Code it was necessary to obtain the sanction of the Court for any proceedings on a private complaint. Now under section 195 all allusion to sanction has been cut out. It is now impossible for any private person to prosecute under this section. It appears to me, therefore, that when section 195 was amended section 537 (*b*) became unnecessary and was naturally omitted. The " irregularity in proceedings taken under section 476 " in my opinion meant irregularity in the actual proceedings such as in the enquiry mentioned in the section and did not apply to the irregularity in the complaint itself which was the result of such proceedings. In my opinion, therefore, section 537 (*a*) applies to this complaint and therefore the pure technical irregularity in the heading of this document may be cured.

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The next point taken by counsel was that as Brahm Datt was prosecuted in the alternative in respect of two statements, one before a Magistrate and the other in the Tribunal, it was necessary to file a complaint both from the Tribunal and from the Court of the Magistrate. At first sight this argument appears to be attractive but it does not take into consideration the words ' or in relation to a proceeding in that Court ' which occur in section 476. It appears to me to be clear that the statement under section 164 was from the point of view of the Tribunal a statement " in relation to a proceeding in that Court," that is, the Court of the Tribunal. Therefore the Tribunal had jurisdiction under this section to hold an enquiry, record a finding, and make a complaint both as regards the statement in its own Court and the statement before the learned Magistrate. This view of the matter finds support in the case of *In re Athi Ambalagaran and six others, appellants* (1) where a Division Bench of the Madras High Court came to a similar decision. I have been referred to the case of *Emperor* v. *Purshotam Ishvar* (2), but that case does not decide this point. One of the Judges in that Full Bench gave expression to a view which would be in favour of counsel's argument, but the point itself was not decided.

In my opinion, therefore, the two points taken by the learned counsel have no force. The learned Magistrate in this case had jurisdiction to hear this complaint and decide it.

The only question which remains is the question of sentence. The sentence imposed by the appellate Court is one of 18 months' rigorous imprisonment. It

(1) (1932) I. L. R. 55 Mad. 536. (2) (1921) I. L. R. 45 Bom. 834 (F.B.).

has been pressed by counsel that the earlier statement of the accused in this case was false. I need not go into the allegation that it was procured by torture or duress but it may well be, as counsel contends, that the earlier statement was false and the later statement in the Tribunal correct. I think at any rate I am entitled to take this possibility in favour of the accused. It can be argued that the accused having committed perjury in the lower Court had done his best to put the matter right before the Tribunal. Further he has been for the past five years in an extremely uncomfortable position. He was actually in the lock-up for almost 18 months. He was a student when he was arrested and five years of his life have been wasted. This may largely be due to his own fault but the fact remains. He might have been prosecuted for failing to comply with the terms under which he was tendered a pardon, but he has not in fact been prosecuted. Taking all this into consideration I consider eighteen months too severe. I set aside the sentence imposed by the lower appellate Court and substitute six months' rigorous imprisonment. I recommend that in view of his position he be kept in 'B' class prison. The accused will surrender to his bail before the District Magistrate.

C. H. O.

Appeal accepted in part.