APPELLATE CRIMINAL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1896. December 14.

IMPERATRIX *v.* JIJIBHAI GOVIND.*

Penal Code (Act XLV of 1860), Sec. 211—False complaint to police—Code of Criminal Procedure (Act X of 1882), Sec. 162—Statements of witnesses before police not admissible against accused—Evidence.

The accused complained to the police that A and B had robbed him. After inquiry the police reported to the Magistrate that the charge was false. The Magistrate thereupon struck off the case without holding any further inquiry himself. The accused was subsequently charged and convicted under section 211 of the Penal Code of making a false charge. On appeal it was contended that as the accused had not been given an opportunity of substantiating his complaint before a Magistrate, his prosecution was illegal, or, at the most, he ought to have been charged under section 182, and not section 211.

Held, that in order to constitute an offence under section 211 it was not necessary that the complaint should be made to a Magistrate. It was enough that it was made to the Police authorities and related to a cognizable offence, and that action was thereupon taken by the police.

Held, also, that the fact that no opportunity was allowed to the accused by the Magistrate to substantiate his complaint before striking it off, was not a circumstance which invalidated the commitment duly made, and the conviction otherwise good could not be set aside on account of such omission. The trial before the committing Magistrate and in the Sessions Court gave ample opportunity to the accused to substantiate his complaint, and he was not prejudiced by the omission.

The positive prohibition under section 162 of the Criminal Procedure Code (Act X of 1882), *viz.*, that statements to the police other than dying declarations shall not be used in evidence against the accused, cannot be set aside by reference to section 157 of the Evidence Act (I of 1872).

APPEAL from the decision of C. Fawcett, Joint Sessions Judge of Broach.

The accused was charged under section 211 of the Indian Penal Code (Act XLV of 1860) with having falsely charged Anop Talsia and two other persons with theft before the District Inspector of Police, Broach, and thereby causing criminal proceedings to be instituted against the said persons. In January, 1896, the accused was going from the village of Haldar to Wagusna. On his way he had an altercation with a gang of

* Criminal Appeal, No. 326 of 1896.

railway coolies. On his arrival at Wagusna he gave information to the police pátel there that he had been robbed by the railway coolies of Rs. 25. The police pátel thereupon went with him to the place where the alleged robbery was committed, and the accused identified one Anop Talsia as one of those who robbed him.

The police pátel at the request of the accused reported the complaint to the chief constable and the accused himself made a further complaint to the inspector of police, who took it down in writing. The inspector also went with the accused to the place of the robbery and the accused identified a second person (Hussein) as one of the three who had committed the offence. The person so identified was arrested and a watch was kept upon his house, which was searched. Nothing, however, was found to incriminate him. The inspector of police then transferred the inquiry to the chief constable under a written order in which he expressed an opinion that the complaint was false.

The chief constable after a further inquiry made a report under section 157, Criminal Procedure Code (Act X of 1882) to the First Class Magistrate, in which he stated that his opinion was that the charge was false, and he asked that the complaint should be struck off. The Magistrate concurred, and characterized the complaint as maliciously false.

The accused was then charged under section 211 of the Penal Code.

The Joint Sessions Judge, disagreeing with both the assessors, found the accused guilty, and sentenced him to rigorous imprisonment for a year and a half, and a fine of Rs. 500.

Against this conviction and sentence the accused appealed to the High Court.

Chimanlal H. Setalvad, for the accused:—There has been no magisterial enquiry into the complaint of theft which the accused made and which is alleged to have been "maliciously false." Without such enquiry the prosecution of the accused is illegal, because he was not allowed an opportunity of proving the truth of the complaint made by him—*Government* v. *Karim-*

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dad[1]; *Empress* v. *Grish Chunder*[2]; *Giridhari Mondal* v. *Uchit Jha*[3]; *Queen-Empress* v. *Sham Lall*[4]. Then there were no proceedings instituted—only a complaint to the police. This is not an offence—*Queen-Empress* v. *Bisheshar*[5]. The statements of witnesses taken by the police during the investigation have been used as evidence to corroborate the evidence for the prosecution. This is contrary to the provisions of section 162 of the Code of Criminal Procedure.

Ráo Sáheb *Vásudev J. Kirtikar*, Government Pleader, for the Crown:—The accused has had ample opportunity in the Sessions Court to prove the truth of his complaint. He tried to do so and failed. He has, therefore, rightly been convicted.

Accused's complaint was, no doubt, to the police, but action was taken thereupon, and that amounts to an institution of criminal proceedings within the meaning of section 211 of the Penal Code (Act XLV of 1860). See *Karim Baksh* v. *Queen-Empress*[6].

As to the admission of the statements of witnesses before police as evidence in this case, no doubt section 162 of the Code of Criminal Procedure prohibits their being used against the accused, but they are not inadmissible in evidence (see section 157 of the Evidence Act I of 1872). Independently of these statements there is other reliable evidence to support the conviction. So the accused is not prejudiced.

RANADE, J.:—In this case the Joint Sessions Judge of Broach disagreeing with the assessors convicted the accused of an offence under the first part of section 211, and sentenced him to rigorous imprisonment for 1½ years, and a fine of Rs. 500.

Mr. Chimanlal in arguing the appeal before us, raised two preliminary points of law which must first be disposed of before considering the case on its merits. The first point had reference to the fact that the prosecution in this case was ordered without any proper enquiry before a Magistrate into the truth or falsehood of the charge brought by the accused. The complaint of rob-

(1) I. L. R., 6 Cal., 496.
(2) I. L. R., 7 Cal., 87.
(3) I. L. R., 8 Cal., 475.
(4) I. L. R., 14 Cal., 767.
(5) I. L. R., 16 All., 121.
(6) I. L. R., 17 Cal., 574.

bery, or, as the Joint Sessions Judge has found it to be, of theft, or misappropriation, brought by the accused against Anop and Hussein was not preferred before a Magistrate. It was made to the police inspector, and after the police had made enquiries it was reported by the police chief constable to be a false complaint, and, therefore, it was struck off by the orders of the Magistrate. Mr. Chimanlal contended that as no opportunity had been allowed to the accused to substantiate his complaint before the Magistrate directed it to be struck off, the prosecution was not legal in its inception, and that at the most the charge ought to have been brought under section 182.

We are unable to accept this contention. In *Reg.* v. *Arjun*[1] and *Empress* v. *Arjun*[2] it has been held that when one person specially complains that another has committed an offence, and such complaint is shown to have been falsely made with the object of injuring that other person, the offence falls under section 211, and not under section 182. There is also ample authority for holding that to constitute an offence under the first part of section 211, it is not necessary that the complaint should have been made to a Magistrate, but that it is enough if it is made to the police authorities, and relates to a cognizable offence, and action is taken thereupon by the police authorities concerned—*Queen* v. *Subbanna*[3]; *Empress* v. *Abul Hasan*[4]; *Empress* v. *Salik*[5]; *Empress* v. *Parabu*[6]; *Queen-Empress* v. *Karim Buksh*[7]. A person who sets the criminal law in motion by making to the police a false charge in respect of a cognizable offence institutes criminal proceedings under the first part of section 211.

On this point there is no divergence of views between the Calcutta and Allahabad High Courts. That divergence is confined to the question whether the latter part of section 211 applies to such cases of complaints to the police which are disposed of without a formal magisterial inquiry. A Full Bench of the Calcutta High Court has held that the latter part of

(1) 1 Bom. H. C. Rep., 87.
(2) I. L. R., 7 Bom., 124.
(3) 1 Mad. H. C. Rep., 30.
(4) I. L. R., 1 All., 697.
(5) I. L. R., 1 All., 527.
(6) I. L. R., 5 All., 598.
(7) I. L. R., 14 Cal., 633.

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section 211 would apply to such cases when the charge related to the more serious offences—*Karim Buksh* v. *The Queen-Empress*[1], while the Allahabad High Court has dissented from that view, and decided that, unless the matter was enquired into by a Magistrate, the latter part of section 211 would not apply—*Queen-Empress* v. *Bisheshar*[2]. There has been no ruling on the point in this Court, and it is not necessary to decide it here, as the Joint Sessions Judge has convicted the accused of an offence under the first part of section 211 about the applicability of which there is no dispute.

As regards the allegation that no opportunity was allowed to the accused by the Magistrate to substantiate the charge before he ordered the complaint to be struck off, we are of opinion that such a course is no doubt very desirable in the ends of justice, but its omission is not a circumstance which invalidates a commitment duly made, and a conviction otherwise good cannot be set aside on account of such omission—*Queen-Empress* v. *Ganga Ram*[3]; *Government* v. *Karimdad*[4]; *Reg* v. *Navalmal*[5]; *Ramasami* v. *The Queen-Empress*[6]. The trial before the Committing Magistrate and in the Sessions Court offered ample opportunity for the accused person to substantiate his complaint, and the omission is not one which has prejudiced the interests of the accused.

We must, therefore, overrule both these contentions. Turning next to the merits (here His Lordship reviewed the evidence and continued). On the whole, therefore, we feel satisfied that the Joint Sessions Judge has correctly appreciated the probabilities of the case, and the conviction must stand.

We note for the information of the Joint Sessions Judge that the procedure followed by him in admitting as corroborative evidence against the accused all the statements (Exhibits 32—42) made by the witnesses to the police was distinctly opposed to the provisions of the law on this behalf and the rulings of this Court in *Queen-Empress* v. *Sitaram Vithal*[7] as also *Roghuni Singh* v.

(1) I. L. R., 17 Cal., 574.
(2) I. L. R., 16 All., 124.
(3) I. L. R., 8 All., 38.
(4) I. L. R., 6 Cal., 496.
(5) 3 Bom. H. C. Rep., Cr. Ca., 16.
(6) I. L. R., 7 Mad., 292.
(7) I. L. R., 11 Bom., 657.

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The Empress[1]. The positive prohibition under section 162, Criminal Procedure Code, cannot be set aside by reference to section 157 of the Evidence Act. This irregularity has not affected the merits and calls for no further notice. We confirm the conviction, but alter the substantive sentence of imprisonment to one of six months' rigorous imprisonment.

Conviction confirmed.

(1) I. L. R., 9 Cal., 455.

APPELLATE CIVIL.

Before Sir C. F. Farran, Kt., Chief Justice, and Mr. Justice Fulton.

RAMANGAVDA AND OTHERS (ORIGINAL OPPONENTS), APPELLANTS, *v.* SHIVAPAGAVDA (ORIGINAL APPLICANT), RESPONDENT.*

1896. *December* 18.

Vatan—Share of vatan—Vatan divided into takshims or shares—Decree by holder of one share against holder of other—Execution of decree—Collector's certificate forbidding alienation—Vatan Act (Bom. Act III of 1874), Secs. 4 and 10(1)—Validity of Collector's certificate.

There cannot be two separate vatans in connection with one hereditary office: therefore, when a vatan is broken up into shares or *takshims*, those *takshims* do not constitute separate vatans.

* Second Appeal, No. 591 of 1896.

(1) Section 4 of the Vatan Act (Bom. Act III of 1874):—

4. In this Act, unless there be something repugnant in the subject or context,

"Vatan property" means the moveable or immoveable property held, acquired, or assigned for providing remuneration for the performance of the duty appertaining to an hereditary office.

It includes a right to levy customary fees or perquisites, in money or in kind, whether at fixed times or otherwise.

It includes cash payment in addition to the original vatan property made voluntarily by Government, and subject periodically to modification or withdrawal.

"Hereditary office" means every office held hereditarily for the performance of duties connected with the administration or collection of the public revenue, or with the village police, or with the settlement of boundaries, or other matters of civil administration.

The expression includes such office even where the services originally appertaining to it have ceased to be demanded.

The vatan property, if any, and the hereditary office, and the rights and privileges attached to them together constitute the vatan.