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objection that he was not competent to do so until the period of appeal had expired, it would certainly have been a sound argument on behalf of the decree-holder to say that his right to take out execution should not be [414] construed to be restrained longer than was necessary under the strict terms of the clause in the decree. Then again, looking to the reason of the thing, we are of opinion that the stay of execution which the order as construed by the Court below would allow, was sufficient for all purposes. If the application for insolvency was refused, there could be no objection to execution being taken out immediately. If it was granted and further stay of execution was necessary, the subsequent proceedings that were followed by the vesting of the property in Receiver would insure such further stay as might be necessary. So that there is no reason to suppose that the Court which inserted that clause in its decree had any reason for giving to that clause any longer operation than the Court below has construed it to have.

For these reasons appeal No. 203 of 1901 must also be dismissed with costs.

Appeal No. 240 of 1901 has been disposed of by the decision in appeal No. 84 of 1901, the only point involved being whether the present application for execution is barred by limitation. That appeal must, therefore, also be dismissed with costs.

Appeals dismissed.

30 C. 415.

[415] CRIMINAL REVISION.

JAGOBUNDHOO KARMAKAR *v.* EMPEROR.

[27th May, 1902.]

Complaint—Petition to Collector against subordinate officer of Court of Wards—Dismissal of petition—Witnesses, opportunity to call,—Sanction to prosecute—False charge—Penal Code (Act XLV of 1860) s. 211—Code of Criminal Procedure (Act V of 1898) ss. 4 (b) and 195.

A petition to the Collector as the superior officer of the Court of Wards directed against one of his official inferiors, a subordinate officer of the Court of Wards *cutchery*, asking the Collector, as the head of the department, to redress the grievances of the petitioner, is not a complaint within s. 4, cl. (b) of the Code of Criminal Procedure.

Where on such a petition being presented, the Collector saw the petitioner and got him to repeat the statement made in the petition on oath and dealing with it judicially as if it were a complaint dismissed it, without giving the petitioner an opportunity of calling his witnesses, and ordered his prosecution under s. 211 of the Penal Code :

Held, that the order for the prosecution of the petitioner under s. 211 of the Penal Code should be set aside, as the Collector was not justified in arbitrarily turning a departmental complaint into a criminal complaint, and that if he had been justified in taking the course that he did, he should have given the petitioner an opportunity of calling his witnesses and proving his allegations.

[*Fol.* 30 Cal. 910 (*F. B.*)=8 C. W. N. 17; 109 P. L. B. 1904; *Ref.* 8 A. L. J. 1106=13 Cr. L. J. 433=11 I. C. 617]

RULE granted to the petitioner, Jagobundhoo Karmakar.

This was a Rule calling on the District Magistrate of Backergunge to show cause why his order of the 23rd January 1902, sanctioning the prosecution of the petitioner under s. 211 of the Penal Code, should not be set aside on the grounds (1) that the petition addressed to the

*Criminal Revision No. 214 of 1902, made against the order passed by D. Weston, Esq., District Magistrate of Backergunge, dated the 23rd January 1902.

Collector as the superior officer of the Court of Wards against a subordinate officer of the Court of Wards *cutchery* within his jurisdiction, was not a complaint as defined by the Code of Criminal Procedure; (2) that even if it was conceded that the petition was a complaint, the Magistrate [416] ought not to have dismissed it, nor should he have sanctioned the prosecution of the petitioner without examining his witnesses.

On the 13th January 1902, the petitioner presented a petition to the Collector, who was also the District Magistrate of Backergunge, against the *tehsildar* of the Amrajuri Court of Wards *cutchery*, stating that the *tehsildar* had the petitioner forcibly brought from his house by some peons, and compelled him to remain at the office, refusing to allow him to go elsewhere until he paid a certain sum of money, and the petitioner asked for redress of the grievance.

The Collector examined the petitioner on the 23rd January 1902, and then, after examining a number of officers of the *cutchery*, dismissed the petition and sanctioned his prosecution under s. 211 of the Penal Code without giving the petitioner an opportunity of calling his witnesses to substantiate the statements made by him in his petition.

Babu Sarat Chander Roy Chowdhury for the petitioner. I submit that the petition I presented to the Collector did not amount to a complaint under the Code of Criminal Procedure. It never was my intention that the Collector should take action criminally as a Magistrate: my petition was addressed to the Collector, as the superior officer of the Court of Wards, against a subordinate officer of the Court of Wards *cutchery*, asking the Collector to act departmentally and to redress my grievance. The Collector had no right, I submit, to turn a departmental complaint into a criminal one. Even if he could do so, he is bound before dismissing my complaint and sanctioning my prosecution to give me an opportunity of proving the statements in my petition by calling my witnesses; but this he has refused to do. I submit that under the circumstances the order for my prosecution should be set aside.

No one appeared for the Crown.

STEVENS AND HARRINGTON, JJ. In this case the Rule was granted calling upon the District Magistrate to show cause why the order directing the prosecution of the petitioner for an offence under section 211 of the Indian Penal Code should not be set aside.

[417] It appears that the petitioner presented to the Collector a complaint as to the conduct of one of the Collector's subordinates, a *tehsildar*, who, it was alleged, compelled him to go to the office, and kept him there until he paid some money, and the petition ended with the prayer that the Collector should redress the petitioner's grievances. The Collector proceeded to deal with the case as though it was a complaint within the meaning of section 4 of the Code of Criminal Procedure. He did not believe the statement of the petitioner; he did not give the petitioner an opportunity of calling his witnesses to substantiate the statements in his petition to the Collector, but purporting to act judicially, he dismissed the complaint and ordered the prosecution of the petitioner for an offence under section 211.

In our opinion this order must be set aside. In the first place, a petition to the Collector directed against one of his official inferiors, and asking the Collector, as the head of the department, to redress the grievances of the petitioner, is not a complaint within section 4, clause (h) of the Code of Criminal Procedure. The Magistrate in fact does not

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contend that it is, but he says that when he saw the petitioner and got the petitioner to repeat his statement on oath, that statement amounted to a complaint.

In our opinion the Magistrate was not justified in arbitrarily turning a departmental complaint into a criminal complaint. Moreover, if the Magistrate had been justified in taking the course that he did, he would still have been bound, if acting judicially, to have given the petitioner an opportunity of calling his witnesses and proving his allegations. He did not do so. We think, therefore, that his proceedings were not warranted by law.

We accordingly make the Rule absolute. The order for prosecution under section 211 is set aside.

30 C. 418 (=7 C. W. N. 116.)

[418] CRIMINAL REVISION.

JOWAHIR PATTAK v. PARBHOO AHIR.* [10th June, 1902.]

Criminal Intimidation—Threat to ruin another by cases—"Injury"—Penal Code (Act XLV of 1860) ss. 44, 503 and 506.

In order to convict a person of criminal intimidation under s. 506 of the Penal Code, it must be found that there was a threat by him to another person of injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested.

Where the petitioner who threatened to ruin the complainant by cases was convicted of criminal intimidation under s. 506 of the Penal Code :

Held, that the conviction could not stand. Had the threat been to ruin the complainant by false cases, the offence of criminal intimidation would have been committed ; but as the threat was to ruin him by cases, it could not be assumed that by cases were meant false cases. If the cases were not false, the mere fact that they were instituted for the purpose of persecuting the complainant would not bring them within the definition of the term "injury."

RULE granted to the petitioner, Jowahir Pattak.

This was a Rule calling upon the District Magistrate of Shahabad to show cause why the conviction of the petitioner under s. 506 of the Indian Penal Code should not be set aside on the ground that on the face of the judgment there was reason to doubt whether the conviction was warranted by law.

The petitioner and another desired the complainant, one Parbhoo Ahir, to sell them a cow, and, on his refusing to do so, they said they would ruin him with cases. On the 30th October 1901 the threat was followed up by a long report being sent to the Subdivisional Magistrate of Buxar accusing Parbhoo Ahir of bad livelihood ; but no action was taken on this report. Again on the 8th of January 1902 a petition was filed before the Magistrate against the complainant charging him with bad livelihood. The petitioner was thereupon convicted by the Subdivisional Magistrate under s. 506 of the Penal Code on the 19th February 1902, and sentenced to pay a fine of Rs. 40.

The report and the petition sent to the Magistrate were not made by the petitioner himself, but were connected by the [418] Magistrate who tried the case with the threats in respect of which the petitioner was convicted.

* Criminal Revision No. 306 of 1902, against the order passed by R. L. Ross, Esq., Subdivisional Magistrate of Buxar, dated the 19th February 1902.