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32 C. 178=2 Cr. L. J. 170.

But we only find that the District Magistrate refers in a general way to the objection that the complainant is not worthy of credit. It appears, however, that other points must have been raised; because he goes on to say that the lower Court has considered the evidence fully, and the reasons given for interfering are wholly insufficient. What those reasons were which were urged before him, we do not know.

It is very much to be desired that the District Magistrate, without going to the length of writing an elaborate judgment, should, in deciding an appeal, notice briefly but clearly what objections were urged on appeal, and how they were disposed of.

For these reasons we make the Rule absolute, and direct that the District Magistrate do re-hear the appeal; and we are confident that he will deal with the appeal as fully and impartially as if it had not come before him before.

Rule absolute.

32 C. 180 (= 2 Cr. L. J. 171.)

[180] CRIMINAL REFERENCE.

Before Mr. Justice Harington and Mr. Justice Pargiter.

EMPEROR *v.* SARODA PROSAD CHATTERJEE.*

[28th September, 1904.]

Sanction for prosecution—False charge—False information—Indian Penal Code (Act XLV of 1860). ss. 182, 211—Criminal Procedure Code (Act V of 1898), s. 195.

The accused, a railway station-master, sent the following telegram to a head-constable of the Railway Police—"A bag of paddy was stolen from my goods shed last night. Thief was caught. Please come, prosecute him." The head constable inquired into the matter and reported it to be false. The Inspector of Police, in submitting the case to the District Magistrate, recommended that the station-master should be called upon to show cause why he should not be prosecuted under s 182 or s. 211 of the Penal Code.

A judicial inquiry was held by a Deputy Magistrate, and the District Magistrate sanctioned the prosecution of the accused. The accused was tried and convicted under. s. 182 of the Penal Code, by an Assistant Magistrate with second class powers:—

Held, that the sanction given by the District Magistrate was sufficient; that a prosecution for a false charge might be under s. 182 or s. 211 of the Penal Code, but if the false charge was a serious one, the proper course would be to proceed under s. 211.

Held, further, that the present case not being a serious one, it was quite legal to prosecute the accused under s. 182 of the Code.

Bhokteram v. *Heera Kolita* (1), *Russick Lal Mullick, In re* (2) followed.

[Fol. 4 C. L. J. 88; 11 Cr. L. J. 420 = 6 I. C. 944 = 20 P. R. 1910; Ref. 11 Cr. L. J. 252 = 5 I. C. 829=6 P. R. 1910; 64 I. C. 889.]

REFERENCE under s. 438 of the Code of Criminal Procedure.

The accused, who was a railway station-master at the Bullooa Road Station, was informed at 4 A. M. on the 8th May 1904 by one Ram Kishen, a pointsman, that a bag of rice had been stolen from the station godown, that he, Ram Kishen, had aroused the persons who were sleeping at the station, and had pursued and come upon a man named Bhola Dusadh carrying the bag of rice. Bhola dropped the bag and escaped into the house of

* Criminal Reference, No. 195 of 1904, by E. P. Chapman, Sessions Judge of Tirhoot, dated Aug. 25, 1904.

(1) (1879) I. L. R. 5 Cal. 184. (2) (1880) 7 C. L. R. 382.

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[181] his brother. The railway people tried to enter the house but were prevented from doing so. At 5 A. M. the same morning the accused sent the following telegram to the head constable of the Railway Police,—"A bag of paddy was stolen from my goods-shed last night. Thief was caught. Please come and prosecute him." The head constable came to the Bulooa Road Station and, having inquired into the matter, reported that the charge was false. The Inspector of Police in submitting the case to the District Magistrate recommended that the station-master should be called upon to show cause why he should not be prosecuted under s. 182 or s. 211 of the Penal Code. A judicial inquiry was held by a Deputy Magistrate, after which the District Magistrate sanctioned the prosecution of the accused. The accused was charged under s. 182 of the Penal Code, and tried by an Assistant Magistrate with second class powers and sentenced to one month's rigorous imprisonment. The District Magistrate confirmed the conviction and sentence in appeal.

On the 25th August 1904, the Sessions Judge of Tirhoot referred the case to the High Court under s. 438 of the Criminal Procedure Code.

The material portion of the Letter of Reference was as follows:—

"*A brief analysis of the case*: One Saroda Prosad Chatterjee, a station-master at Bulooa Road railway-station at 5-21 A.M. on the morning of the 8th May last sent the following telegram to a head-constable of the Railway Police, 'A bag of paddy was stolen from my goods-shed last night. Thief was caught. Please come and prosecute him.' The head-constable came to a Bulooa Railway station and there recorded the station-master's information in the prescribed form. Read with the evidence in the case, the information so recorded must be taken to be as follows: 'The station-master who lives in a house some 40 yards from the station was informed at 4 A.M. that morning by one Ram Kishen, a pointsman, that a bag of rice had been stolen from the station godown, that Ram Kishen had aroused the persons who were sleeping at the station, that there had been a pursuit, that they had actually come upon a man named Bhola Dusadh carrying the bag of rice, that the man dropped the bag and escaped into the house of his brother Makhon Dusadh, and that the station people tried to enter the house and arrest Bhola but were prevented.' The station-master's information does not mean that he himself took any part in the affair or that he heard of it until Ram Kishen informed him after all was over. The head-constable enquired and reported the charge as false, giving his opinion that Ram Kishen, pointsman, was the real fabricator of the charge (*asal men iske banikar Ram Kishen pointsman hai*). The Inspector of [182] Police in submitting the case to the District Magistrate recommended that the station-master should be called on to show cause why he should not be prosecuted under section 182 or section 211 of the Indian Penal Code.

There was a judicial enquiry, after which the District Magistrate sanctioned the prosecution of the station-master. He was charged with an offence under section 182 of the Penal Code and tried by Mr. S.W. Goode, a Magistrate with second class powers, and sentenced to one month's rigorous imprisonment. The District Magistrate confirmed the conviction and sentence on appeal.

I submit that the information having been given to the head-constable, it was irregular to put the station-master on his trial for an offence under section 182 of the Indian Penal Code, except upon the sanction or complaint of the head-constable or of some police officer to whom the head-constable was subordinate. The sanction of the District Magistrate was not sufficient: *Ramasory Lall* v. *Queen-Empress* (1). It is difficult to hold that the station-master was not prejudiced, for the head-constable who investigated the case reported that the real maker of the charge was the pointsman.

I further submit that the offence, if it was one, was an offence punishable under section 211 and not under section 182 of the Penal Code. *Raffe Mahomed* v. *Abbas Khan* (2), *Karim Buksh* v. *Queen-Empress* (3), *Giridhari Naik* v. *Empress* (4), *Ram Logan Lal* v. *Emperor* (5). Mr. Goode, is a second class Magistrate and an offence under section 211 is not triable by him.

(1) (1900) I. L. R. 27 Cal. 452.
(2) (1867) 8 W. R. (Cr.) 67.
(3) (1888) I. L. R. 17 Cal. 574.
(4) (1901) 5 C. W. N. 727.
(5) (1903) 7 C. W. N. 556.

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I further submit that both Mr. Goode and the Disirict Magistrate have based their finding on what they consider the improbabilities in the evidence adduced in support of the station-master's information. Neither Magistrate distinctly says that he believes the affirmative evidence in support of the prosecution. Mr Goode says merely 'The story for the prosecution is that this account of the theft is false and that in fact the station employees that night made a raid on Bholi's buffaloes in order to impound them.' The District Magistrate does say. 'The staff seem to threaten and the station staff apparently on the night of the occurrence attempted to take the cattle of Bholi from his shed.' Mr. Goode does not say that he believes the evidence for the prosecution, and the District Magistrate has not discussed the evidence for the prosecution in any way and does not distinctly say that he believes it. I further submit that there is no evidence that the station-master knew or had reason to believe that the information given him by Ram Kishen was false. His sons who say they took part in the pursuit were not sleeping in his quarters that night.

The grounds upon which in my opinion the order should be reversed : In addition to the grounds above indicated, I submit the real ground is that there was no credible evidence that the charge was false. Four witnesses only were examined for the prosecution. The first was the investigating police officer whose evidence, so far as the falsity of the charge goes, is all hearsay. The second is the accused Bhola Dusadh who says that the [183] station staff used to take milk from him and refused to pay for it. He would not give them any more, so on the night of the alleged occurrence the station staff all came down to his house and carried off his buffaloes in order to take them to the pound. The next witness is the accused's brother Mehi Dusadh. He says nothing about the quarrel over the milk, but suggests that the motive of the false charge by the station staff was that a few days before the Railway staff threatened to impound his brother's cattle for trespass, and wanted to take money from his brother, an entirely different story, which seems practically to have been denied by his brother. The fourth and last witness says that the accused Bholi lives 160 yards from the village, he wakes up in the middle of the night to see Gopi (one of the menials of the station staff) and three others whom he did not recognise driving of eleven (!) off the buffaloes belonging to Bholi Dusadh. Bholi and the villagers rescued the cattle. The witness admits having a grudge against the Railway for having impounded a cow of his for grazing on the line. I submit that the story of the prosecution is very improbable, and supported as it is by such unnecessarily slight evidence, it is impossible to believe it. It is said that many villagers turned out, and yet only one witness living at a distance and with a grudge against the railway can be induced to come and give evidence.

The station-master has been released on bail pending the orders of the High Court in the matter.

Babu *Manmatha Nath Mukerji*, for the petitioner, in support of the Reference. The trial of an offence under s. 182 of the Indian Penal Code requires sanction under s. 195 of the Criminal Code, the provisions thereof being mandatory. Section 537 of the Code will not cure such an illegality, the trial being in contravention of the express provisions of s. 195 of the Code. The question of prejudice does not arise : see *Subramanya Ayyar* v. *King-Emperor* (1). The sanction of the District Magistrate is not sufficient : see *Ramasory Lall* v. *Queen-Empress* (2). The offence, if any was under s. 211 and not s. 182 of the Penal Code : see *Giridhari Naik* v *Empress* (3), *Queen Empress* v. *Karim Buksh* (4), *Karim Buksh* v. *Queen Empress* (5), *Raffee Mahomed* v. *Abbas Khan* (6), *Baperam Surma* v. *Gour Nath Dutt* (7), *Bhokteram* v. *Heera Kolita* (8). Supposing it fell within both the sections, the Magistrate was not competent to split up the offence and try the accused for the minor offence, ignoring the graver one. As to the facts, the evidence pointed to the *bona fides* of the accused, he having acted on the information received [184]

(1) (1901) I. L. R 25 Mad. 61.
(2) (1900) I. L. R. 27 Cal. 452.
(3) (1901) 5 C. W. N. 727.
(4) (1887) I. L. R. 14 Cal. 633.
(5) (1888) I. L. R. 17 Cal. 574.
(6) (1867) 8 W. R. (Cr.) 67.
(7) (1892) I. L. R. 20 Cal. 474.
(8) (1879) I. L. R. 5 Cal. 184.

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and having made sufficient enquiries. He had no motive for bringing a false charge, nor was there any circumstance from which any knowledge of the falsity of the charge on his part could be inferred.

HARINGTON AND PARGITER, JJ. This case was referred to this Court by the Sessions Judge of Darbhanga, and we have heard the learned vakil who appeared on behalf of the convicted person. The Sessions Judge recommends the reversal of the conviction on two grounds of law and three grounds touching the evidence.

The first point of law is that the sanction of the District Magistrate under which this man was prosecuted is not sufficient; see *Ramasory Lall* v. *Queen-Empress* (1). That case is no doubt in point; but if we accept the view there expressed regarding the sanction, we also notice that it also goes on to lay down (what the Sessions Judge ignores) that the insufficiency of the sanction was cured by section 537. That case, therefore, is adverse really. Moreover, as the District Magistrate points out, the objection is wholly unsustainable; for he gave the sanction at the request of the very persons who (it is now contended) ought to have given it, namely, of the Police.

The second point of law is that the offence charged against this man was one under section 211 and not under section 182 of the Indian Penal Code. False charges made to the Police certainly fall under section 211; this was settled as regards the first part of the section by *Queen- Empress* v. *Karim Buksh* (2), and as regards the second part of the section by the Full Bench in *Karim Buksh* v. *Queen Empress* (3), which overruled the former decision in part. But the question here, is, whether they fall exclusively under section 211 of the Indian Penal Code and cannot also fall under section 182.

It was expressly laid down in *Bhokteram* v. *Heera Kolita* (4) that an offence may fall under both sections. It is said there that an offence under section 211 includes an offence under section 182. It is, therefore, open to a Magistrate to proceed under either section, although in cases of a more serious nature it may be that **[185]** the proper course is to proceed under section 211. That ruling referred to *Raffee Mahomed* v. *Abbas Khan* (5), and in a measure reconciled it by pointing out that it was of a serious nature which fell more properly under section 211. The case of *Raffee Mahomed* v. *Abbas Khan* (5) drew a distinction between cases under the two sections, but illustration (*c*) to section 182 negatives that distinction, and the distinction was explicitly (though not pointedly) overruled by *Bhokteram* v. *Heera Kolita*(4). The case of *In the matter of Russick Lal Mullick*(6,) distinctly admits that false cases can fall under section 182, and directs that prosecutions for false cases should be conducted justly and fairly. In *Baperam Surma* v. *Gouri Nath Dutt* (7), it was undisputed that section 182 applied to that false case.

The only case that supports the Sessions Judge's contention is *Giridhari Naik* v. *Empress* (8). There it was declared that a false charge made to the Police of a cognizable offence falls under section 211 and not under section 182, and the Court in so deciding treated the question as concluded by the Full Bench in *Karim Buksh* v. *Queen-Empress* (3) ; but

(1) (1900) I. L. R. 27 Cal. 452.
(2) (1887) I. L. R. 14 Cal. 633.
(3) (1888) I. L. R. 17 Cal. 574.
(4) (1879) I. L. R. 5 Cal. 184.
(5) (1867) 8 W. R. (Cr.) 62.
(6) (1880) 7 C. L. R. 382.
(7) (1892) I. L. R. 20 Cal. 474.
(8) (1901) 5 C. W. N. 727.

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this question was not before that Full Bench, for the Full Bench in that case only decided that a false charge made to the police of a cognizable offence falls under section 211 (about the applicability of the latter part of which section to such cases there had been some doubt), and did not decide anything about section 182. The last ruling is in *Ram Logan Lal* v. *Emperor* (1); and there the Court followed *Queen Empress* v. *Karim Buksh* (2), and decided nothing about section 182.

We have now noticed all the rulings cited by the District Judge and other cases. The law still remains as it was laid down in *Bhokteram* v. *Heera Kolita* (3); and we entirely accept that view. That read with *Russick Lal Mullick, In re* (4), lays down that a prosecution for a false charge may be under section 182 or section 211; but if the false charge was a serious one, the graver section 211 should be applied and the trial should be full and fair.

[186] The present case is not a serious one. It was quite legal to prosecute under section 182 and there has been a full trial.

The objections taken upon the evidence deal rather with the merits of the case; and the first is that the conviction is based on improbabilities in the evidence regarding this accused's story of theft, while no Court distinctly finds the counter story put forward by the prosecution to be true. But it was not necessary to find definitely about the counter story. The real question here was whether the charge of theft was true or false; and the charge of theft might be false, quite irrespective of whether the counter story is proved or not. In this case the improbability or incredibility of the charge of theft convinced three Courts of its falsity, namely, the Deputy Magistrate who enquired into it, the Assistant Magistrate who tried this case, and the District Magistrate who heard the appeal.

The second objection on the evidence is that there is no credible evidence that the charge of theft was false. Direct evidence is not always possible, but all the other evidence established its falsity in the opinion of all the Courts. The Courts must decide according to the weight of the evidence.

The third objection on the evidence is that there is no evidence that this man Sarada Chatterjee knew that the charge of theft which he made was false. This point was particularly noticed by the trying Magistrate and by the appellate Magistrate; and there is evidence including significant admissions and statements by the accused himself. Direct evidence is not, of course, always available in such matters.

The points of law fail, and further objections touching the evidence would simply convert the reference into an appeal on the facts. It is not the rule of this Court to interfere on revision with the decision of facts upon the evidence, unless for very special reasons. We can find no special reasons. On the contrary we see no reason to think that the unanimous finding of all the lower Courts is wrong. We disallow the reference; and Sarada Prosad Chatterjee, if on bail, must surrender and serve out the rest of his sentence.

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(1) (1903) 7 C. W. N. 556.
(2) (1887) I. L. R. 14 Cal. 633.
(3) (1879) I. L. R. 5 Cal. 184.
(4) (1880) 7 C. L. R. 382.