

MADRAS HIGH COURT REPORTS.

APPELLATE JURISDICTION (a)

*Criminal Petition, No. 69 of 1862*

THE QUEEN *against* SUBBANNA GAUNDAN and others

To constitute the offence of preferring a false charge, under sec. 211 of the Penal Code, the charge need not be made before a magistrate. Nor need the charge have been fully heard and dismissed : it is enough if it is not pending at the time of trial.

1862.  
October 27.  
Crim. P.  
No. 69 of 1862.

THE petitioners were convicted under section 211 of the Penal Code (Act XIV. of 1860), by S. N. Ward, the Sessions Judge of Coimbatore, for falsely charging the prosecutor with having committed the offence of highway robbery, knowing that there was no just or lawful ground for such charge. The charge had been preferred before an inspector of police, who disbelieved and refused to act upon it.

Section 211 of the Penal Code enacts that " whoever with intent to cause injury to any person, institutes, or causes to be instituted, any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished" as therein mentioned.

*Branson* for the petitioners. The conviction was wrong, for, first, it did not appear that the charge was made before a magistrate, and, secondly, it did not appear that the charge was finally disposed of in the prosecutor's favour, and this it would be necessary for the plaintiff to prove in the case of an action for a malicious prosecution.

SCOTLAND, C. J. :—To constitute the offence of preferring a false charge contemplated in section 211 of the Penal Code, it is not necessary that the charge should be before a magistrate. It is enough if it appear, as it does in the present case, that the charge was deliberately made before an officer of police, with a view to its being brought before a magistrate. Of course a mere random conversation or remark would not amount to a charge. As to the other point it is said that it must appear that the charge was

(a) Present Scotland C. J. and Phillips, J.

fully heard and dismissed. That is not necessary. It is enough in a case like the present if it appear that the charge is not still pending. An indictment for falsely charging could not be sustained if the accusation were entertained and still remained under proper legal enquiry. Here the facts that the inspector of police refused to act upon the charge, and that no further step was taken, are enough to bring the case within section 211.

PHILLIPS, J. concurred.

*Conviction affirmed.*

ORIGINAL JURISDICTION (a)

*Criminal Case Reserved.*

THE QUEEN against WILLANS.

An indictment for cheating, under sections 415 and 420 of the Penal Code, should state that the property obtained was the property of the person defrauded. But

An indictment defective in this respect is defective for uncertainty and must be objected to, if at all, before the jury is sworn.

*Semble* the latter part of section 41 of Act XVIII of 1862, only gives power to amend where the defect is formal.

CASE stated by Scotland, C. J.

"The prisoner, William Russell Willans, was tried and convicted before me of the offence of cheating under sections 415 and 420 of the Indian Penal Code. The indictment charged the offence to be by falsely pretending to the prosecutor Abdulla Sâhib that a certain order drawn by the said William Russell Willans, otherwise called William Russell, on the manager of the Oriental Bank of Madras was a valuable security for the payment of money, and that the prisoner thereby deceived the said Abdulla Sâhib, and fraudulently induced him to pay the sum of two hundred and ninety-two rupees and eight annas to him the said William Russell Willans, otherwise called William Russell, in exchange for the said order, in consequence of which the said Abdulla Sâhib suffered damage in his property: Whereas in truth and in fact the said order was not a valuable security

1862.  
October 30.

(a) Present Scotland, C. J. and Bittleston.