FULL BENCH.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Wilson, Mr. Justice Tottenham, Mr. Justice O'Kinealy, and Mr. Justice Macpherson.

1888
Sept. 5.

KARIM BUKSH *v.* THE QUEEN-EMPRESS.*

False charge—False charge made to police—Institution of Criminal Proceedings—Penal Code, s. 211.

A person who sets the criminal law in motion by making a false charge to the police of a cognizable offence institutes criminal proceedings within the meaning of section 211 of the Penal Code; and if the offence fall within the description in the latter part of the section, he is liable to the punishment there provided.

IN this case the accused Karim Buksh was charged with having falsely instituted criminal proceedings against one Khoaz Mundul by charging him with committing mischief by fire (an offence under section 436 of the Penal Code), knowing that there was no just or lawful ground for such charge, and with having thereby committed an offence under section 211 of the Penal Code.

The facts were thus stated in the judgment of the Sessions Judge:—

"On the 15th November Karim Buksh complained to the head constable of Phulpar Thana that Khoaz Mundul had come with 40 or 50 persons to his homestead and had set to work erecting a house there, on the pretext that the land appertained to another man's homestead, which Khoaz had purchased. Karim Buksh went on to state that he remonstrated, and that he was then chased by Khoaz and others to the neighbouring *bari* of his brother, Rasulla; that Khusal Chang, chowkidar, prevented those men from beating him; and that Khoaz Mundul had brought with him a smouldering torch, wherewith he set fire to the house of Karim Buksh. The head constable held a local enquiry and reported the charge as false, and hence the present prosecution under section 211 of the Penal Code.

* Full Bench Reference in Criminal Appeal No. 463 of 1888 from the decision of J. Pratt, Esq., Sessions Judge of Mymensingh, dated 15th May 1888.

"The head constable has proved the complaint. Karim Buksh adheres to that statement, and says the charge he brought was quite true.

"I entertain no doubt that the charge of arson was false, and that Karim Buksh might have been prosecuted for fabricating false evidence as well as for an offence under section 211, Penal Code. The charge he made was one punishable under section 436 with transportation for life or imprisonment up to 10 years. I think the offence comes under the latter part of section 211, Penal Code, and that it was the intention of the Legislature to regulate the punishment proportionately to the gravity of the false charge. In this view I am supported by a ruling of Jackson and Hobhouse, JJ., in *Raffee Mahomed* v. *Abbas Khan* (1). I am aware of a ruling to the contrary in *Queen-Empress* v. *Karim Buksh* (2) following *Empress of India* v. *Pilam Rai* (3) and *Empress* v. *Paraku* (4), but I am in a position to say that these latter rulings are opposed to the practice current in the mofussil Courts during many years. Moreover, it seems to me that when a man formally lays a charge of a cognizable offence at a police-station, he in effect asks the police to investigate the charge, arrest the accused, and send him for trial before a Magistrate, and that this is nothing short of 'instituting criminal proceedings,' and it was so laid down in *Queen* v. *Bonomally Sohai* (5). If it be held that the latter part of section 211 refers only to false charges instituted directly in Court, then there arises an anomaly. The more heinous the offence the more imperative is it, according to practice and reason, that the complainant should go to the police in the first instance. A man must almost of necessity go first to the police if he wishes to prefer a charge of murder for instance, whereas he might, and not unfrequently does, go to a Magistrate if he wishes to lay a charge of grievous hurt under section 325, Penal Code. Supposing these charges were proved to be false, the man who brought the former with the object of getting an innocent man hanged could be punished only with two years' imprisonment and fine, and would be triable by a Magistrate, while the one who brought the far less heinous charge

(1) 8 W. R., Cr. 67.
(2) I. L. R., 14 Calc., 633.
(3) I. L. R., 5 All., 215.
(4) I. L. R., 5 All., 598.
(5) 5 W. R., Cr. 32.

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before a Magistrate would be liable to a sentence of seven years' imprisonment and would be triable only by the Sessions Court. The case of *Queen* v. *Hanooman Lall* (1) was a false charge of murder preferred to the police and committed to the Sessions Court, and the High Court did not disturb the sentence. I would also refer to *Queen* v. *Nuthoo Doss* (2), *In the matter of the petition of Kader Buksh* (3), *Ashrof Ali* v. *Empress* (4), and *Empress* v. *Salik Roy* (5)."

The Sessions Judge concurring with one of the assessors found the accused guilty, and sentenced him to three years' rigorous imprisonment.

The accused appealed, and the appeal came on for hearing before WILSON and RAMPINI, JJ., by whom it was referred to a Full Bench with the following order:—

In this case we see no reason to interfere with the conviction. Nor should we alter the sentence, if it be sanctioned by law. But its legality depends upon a point as to which the decisions of this Court are contradictory, namely, whether the latter part of section 211, Penal Code, applies to a complaint made to the police, or is limited to cases brought before a Court. In the present case the accused made before the police a false charge against one Khoaz Mundul of having committed mischief by fire, an offence punishable, under section 436, Penal Code, with more than seven years' imprisonment. He has been sentenced to three years' rigorous imprisonment. The sentence is lawful if the second part of section 211 applies; if not, it is illegal and must be reduced to not more than two years.

In *Queen* v. *Bonomally Sohai* (6) Campbell and Phear, JJ., held that to prefer a complaint to the police in respect of an offence with which they are competent to deal is to institute a criminal proceeding within the meaning of section 211. In *Raffee Mahomed* v. *Abbas Khan* (7), Jackson and Hobhouse, JJ., took the same view and set aside a conviction by a Magistrate in respect of a false charge made to the police on the ground that the case being

(1) 19 W. R., Cr. 5.
(2) 3 W. R., Cr. 12.
(3) 21 W. R., Cr. 34.
(4) I. L. R., 5 Calc., 281.
(5) I. L. R., 6 Calc., 583.
(6) 5 W. R., Cr. 32.
(7) 8 W. R., Cr. 67.

under the second part of section 211, the Magistrate had no jurisdiction. In *In the matter of the petition of Kader Buksh* (1), Kemp and Glover, JJ., decided to the same effect. It is not stated in the published report of this case that the charge was made to the police, but we have referred to the record and we find that it was so. On the other hand, in *Queen-Empress* v. *Karim Buksh* (2), Petheram, C.J., and Ghose, J., held that to make false charges to the police is not to institute criminal proceedings, and did not fall within the latter part of section 211. We refer to a Full Bench the question which of these conflicting views is correct.

No one appeared on either side at the hearing before the Full Bench.

The judgment of the Full Bench (PETHERAM, C.J., and WILSON, TOTTENHAM, O'KINEALY, and MACPHERSON, JJ.) was delivered by

WILSON, J.—Section 211, Indian Penal Code, enacts as follows:—

"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 with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

The question before us is whether the latter part of the section applies to cases in which complaint has been made to the police of an offence falling within the description given, and into which the police are by law authorised to enquire.

According to the Code of Criminal Procedure now in force, there are two modes in which a person aggrieved may seek to put the criminal law in motion. He may make a charge, or in the language of the Code give information, to the police (section 154). If the information discloses a cognisable offence, the proper officer of police may proceed to make an investigation; and if the result of that investigation is adverse to the accused, he is, in due course, brought by the police before a Magistrate. All this forms the subject of Chapter XIV of the Procedure Code. If the

(1) 21 W. R., Cr. 34. (2) I. L. R., 14 Calc., 633.

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information does not disclose a cognisable offence, the police cannot take any step of their own authority. Secondly, a person aggrieved may lay a charge, or, as the Code calls it, a complaint, (section 191) before a Magistrate.

Whichever of these methods is adopted, the thing done by the accuser is the same, that which is called in the one case giving information, in the other making a complaint. In each case the steps that follow are governed by the Criminal Procedure Code. In each the first step taken by the accuser is ordinarily also the last, for from that time the control of the investigation or enquiry passes out of his hands into those of the constituted authorities; subject to this, that if, after an information before the police, the result of their investigation is adverse to the complainant, he may renew his complaint to the Magistrate. The procedure by information to the police is by far the more common course of proceeding, especially where any grave offence is alleged. A system similar to the present in these matters was in force when the Penal Code was passed in 1860; it was embodied in the First Procedure Code of 1861, and has been continued ever since.

In that state of things, if the latter part of section 211 had stood alone, there could probably have been no doubt that the words "if such criminal proceedings be instituted" applied no less to a case in which the criminal law is set in motion by information to the police than to one in which it is set in motion by complaint to a Magistrate. But the doubt arises from the fact that the expressions "institutes criminal proceedings" and "falsely charges" occur in the first part of the section, and only the one expression "such criminal proceedings be instituted" in the latter. And hence the argument arises that the Legislature must have meant different things when it spoke of "instituting proceedings" and "making a charge," and that only what fell within the former phrase was within the latter part of the section.

I agree in this reasoning in one sense and not in another. I agree that we must take it that the Legislature did not regard the two phrases as co-extensive in meaning, but considered that there were, or might be, cases to which the one would apply and not the other. But I do not think we are to suppose that the Legislature meant the phrases to be mutually exclusive in

meaning, so that the instituting of criminal proceedings must be by something which is not a charge, and a charge must be something which is not the institution of criminal proceedings. This cannot, I think, be for two reasons. First, because there is no mode by which a private accuser can institute criminal proceedings except by making a charge; and if he does not do it by the charge, he never does it at all, to whatever length the proceedings may go. And secondly, because the last part of the section speaks of "proceedings instituted on a false charge."

It is not difficult to see various classes of cases which either do or probably may fall under one of the expressions used and not under the other, and which the Legislature may well have had in view when it used both. Thus proceedings to compel any one to give security, by reason of an anticipated breach of the peace under section 107, or because he is concealing himself or has no ostensible means of subsistence under section 109 of the Procedure Code, are apparently criminal proceedings, but they do not necessarily involve a charge of any offence. On the other hand, a charge to the police of a non-cognizable offence may very possibly be a charge within the meaning of the section, but could hardly be called the institution of criminal proceedings. So a charge made to the Judge of a Civil Court, or to public officers of other kinds, in order to obtain sanction to prosecute may well be a charge, but is not the institution of criminal proceedings.

For these reasons, I think that a man who sets the criminal law in motion by making a false charge to the police of a cognizable offence, *institutes* criminal proceedings *within the meaning* of section 211 of the Penal Code; and that if the offence fall within the description in the latter part of the section, he is liable to the punishment there provided.

J. V. W.