

Before Mr. Justice Mitter and Mr. Justice Maclean.

1881

Jan. 20.

THE EMPRESS *v.* SHIBO BEHARA.*

Penal Code (Act XLV of 1860), s. 211—Sanction to Prosecution for making False Charge.

A sanction for a prosecution for making a false charge under s. 211 of the Penal Code, without hearing all the witnesses whom the person accused of making the false charge wishes to produce, is illegal.

The High Court has power to quash an illegal commitment at any stage of the case.

THE accused Shibo Behara, at Teapo Police outpost, brought a charge against one Bali Jenna and others of arson. The Police took up the case and reported it to be a false charge, and the Magistrate, thereupon, sanctioned the prosecution of Shibo Behara, under s. 211 of the Penal Code. Previously to this order, however, Shibo presented a petition to the Magistrate asking for a judicial enquiry; but this petition does not appear to have been disposed of. The case under s. 211 was sent to a Deputy Magistrate, who committed the accused for trial. Before the Sessions Judge the accused pleaded not guilty, and objected to being tried, on the ground that he had been prejudiced by the refusal to grant judicial inquiry he asked for.

The Sessions Judge, being of opinion that the objection was a good one, and that the commitment should be, therefore, quashed, referred the case to the High Court under s. 296 of the Criminal Procedure Code, in his reference citing the following cases:—*In the matter of Gour Mohan Sing* (1), *In the matter of Bishoo Barik* (2), *Ashrof Ali v. The Empress* (3), *Nusibunnissa Bibee v. Sheikh Erad Ali* (4), *Sheikh Erad Ali v. Nusibunnissa Bibee* (5), and *Government v. Karimdad* (6).

* Criminal Reference, Nos. 226 and 227 of 1881, and letters Nos. 120 and 121, from the order of A. W. Cochran, Esq., Officiating Sessions Judge of Cuttack, dated the 27th December 1880.

(1) 8 B. L. R., Ap., 11.

(2) 16 W. R., Cr., 77.

(3) I. L. R., 5 Calc., 281.

(4) 4 C. L. R., 413.

(5) *Id.*, 534.

(6) *Ante*, p. 496.

The following were the opinions of the High Court :—

MITTER, J.—Whether the Judge was right or not in postponing the trial after it had once begun, I think this Court has the power to quash an illegal commitment at any stage of a criminal proceeding.

In these two cases I am of opinion that the commitments should be set aside on the ground that the sanction for prosecution under s. 211 was illegally given. Whatever might have been said in *Nusibunnissa Bibee v. Sheikh Erad Ali* (1), the later cases have distinctly laid it down that a sanction for prosecution under s. 211 given without hearing all the witnesses whom a complainant wishes to produce in Court, is illegal. In these cases, therefore, the original orders sanctioning prosecution under s. 211 are illegal. That being so, the commitments are also illegal. I would, therefore, set them aside as recommended by the Judge.

MACLEAN, J.—The principle involved in these cases is the same as that involved in the case of *Chukrodhur Pati* just disposed of; and as I am of opinion that any convictions had upon the trials under the commitments which we are asked to quash would be set aside, I think the simplest course is to set aside the proceedings at this stage.

SMALL CAUSE COURT REFERENCE.

Before Sir Richard Garth, Kt., Chief Justice, Mr. Justice White, and Mr. Justice Mitter.

KALI KUMAR ROY (PLAINTIFF) *v.* NOBIN CHUNDER CHUCKERBUTTY (DEFENDANT).* **

1880
Jan. 13.

Pleaders and Muktears' Act (XX of 1865), ss. 11, 13—Muktears and Private Agent, Distinction between.

Per WHITE and MITTER, JJ.—The mere fact that a person looks after an appeal and gives instructions to pleaders in connection with such appeal, does not show that such person was practising as a muktear within the meaning of s. 13 of Act XX of 1865.

* Small Cause Court Reference, No. 2 of 1880, from Baboo Amrita Lall Chatterjee, Judge of the Small Cause Court at Dacca, dated the 19th December 1879.

(1) 4 C. L. R., 413.

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