

1881

MONA
SHEIKH
v.
ISHAN
BARDHAN.

THE complainant, Mona Sheikh, complained before the police at Gopalpore, that the accused and others arrested him, took him to one Poran Bardhan's house, maltreated him, and kept him in confinement, but afterwards released him. The accused was discharged at the hearing before the Sub-Deputy Magistrate, a Magistrate who could only exercise 3rd class power under s. 211 of the Criminal Procedure Code, and the complainant was directed to pay the accused Rs. 20 as compensation. The case was referred by the Joint Magistrate to the High Court, under s. 296 of the Criminal Procedure Code.

The material portion of the opinion of the Court was as follows :—

MITTER, J.—We do not think that the trial and acquittal were illegal. As for the order for compensation, s. 209 seems to contemplate a dismissal of the complaint rather than an acquittal of the accused; but referring to s. 212 and to the order in which the sections come, we are not prepared to say that an order to pay compensation may not be added to an acquittal.

Before Mr. Justice Mitter and Mr. Justice Maclean.

1881

Jan. 13.

THE EMPRESS v. SALIK ROY.*

Penal Code (Act XLV of 1860), s. 211—Charge made on Report of Police that Case was False—Charge of giving False Information.

A commitment for trial under the provisions of s. 211 of the Penal Code, for knowingly instituting a false charge with intent to injure the persons accused, is not illegal, merely because the complaint which the accused made has not been judicially enquired into, but is based on the report of the Police that the case was a false one.

SALIK ROY, the accused, sent information to the Police through the chowkidar, charging certain persons with setting fire to his house; and he repeated the charge to the Police officer who went to his village to investigate the case. In the end the Police reported the case to be a false one. The Magistrate, thereupon,

* Criminal Reference, No. 213 of 1880, and letter No. T.b. 1, from J. F. Stevens, Esq., Officiating Sessions Judge of Sarun, dated the 18th December 1880.

at once directed the prosecution of Salik Roy for giving false information, without calling upon him or giving him any opportunity to prove his case. Salik Roy was committed to the Court of Session for trial, under the provisions of s. 211 of the Penal Code, for knowingly instituting a false charge with intent to injure the persons whom he accused.

The Sessions Judge, being of opinion that the commitment was illegal and against a decision of the High Court, which he referred to but did not name, sent the record to the High Court in order that the commitment might be quashed, or such other order passed as should seem proper to the High Court.

The following was the opinion of the High Court :—

MITTER, J.—This is a reference from the Judge of Sarun asking us to quash a commitment. The ground upon which we are asked to do so is, that the accused, who is charged with an offence under s. 211, Penal Code, should not have been committed for trial until the complaint which he made had been judicially enquired into; and the Judge refers to a case decided by this Court which he considers applies to the present case.

If the case referred to by the Sessions Judge is the case of *Biyogi Bhagut* (1), we may point out that it is not in all respects similar to the present case. In that case the complainant, dissatisfied with the Police investigation and report, made a complaint to the Magistrate, which was dismissed without hearing his witnesses.

We do not find in the record that there was any complaint made to the Magistrate in this case; but on the report of the Police that the case was false, the prosecution of the complainant was set on foot. We are unable to say that there is anything illegal in the proceedings, and we are supported in this view by the case of *Empress v. Abul Hasan* (2). We are not aware of any recent ruling of this Court of a contrary tenor. We must, therefore, refuse to quash the commitment on the ground on which the Judge's recommendation is based; see *Ashrof Ali v. The Empress* (3).

(1) 4 C. L. R., 134.

(2) I. L. R., 1 All., 497.

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