

1880

IN THE
MATTER OF
THE PETI-
TION OF THE
LEGAL
REMEM-
BRANCE.

upon the law. In the third place, the Local Government, if dissatisfied with the verdict of acquittal, can appeal against it to the High Court.

Having regard to these essential points of difference between the law in India and the law in England, it appears to me that, in order to succeed in an application of this nature when opposed by the person committed for trial, at least as strong a case should be made out in this country as in England, and speaking for myself, I should say a stronger case.

It may be observed that in the affidavit upon which this rule was granted, it was stated that Giridhari Mohunt, upon whose prosecution the accused have been committed, has a strong party in Burdwan opposed to Nobo Gopal, accused, while Nobo Gopal has influence with persons opposed to Giridhari. It therefore appeared quite possible that Nobo Gopal would himself wish to be tried in another district; but as he desires to be tried at Burdwan, and is willing to risk the influence of Giridhari being exerted against him, an order for the transfer of the trial can be made only if we are satisfied that Nobo Gopal may, or may be able to, exert his influence with the jury so as to defeat the ends of justice, and of this I am not satisfied on the affidavit, which is the only evidence before us. I concur in discharging the rule.

Rule discharged.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Field.

1880

Dec. 9.

THE GOVERNMENT v. KARIMDAD.*

Penal Code (Act XLV of 1860), s. 211—Prosecution for making a False Charge—Opportunity to Accused to prove the Truth of Charge.

Before a person can be put upon his trial for making a false charge under s. 211 of the Penal Code, he must be allowed an opportunity of proving the truth of the complaint made by him; and such an opportunity should be afforded to him, if he desires to take advantage of it, *not before the Police, but before the Magistrate.*

* Criminal Reference, No. 198 of 1880, from the order of A. Manson, Esq., Officiating Magistrate of Chittagong, dated the 20th November 1880.

Magistrates should clearly understand that whilst the Police perform their proper duty in collecting evidence, it is the function of the Magistrate alone to decide upon the sufficiency or credibility of such evidence when collected.

1880

GOVERNMENT
v.
KARIMDAD.

ON the 26th July 1880, one Karimdad laid a complaint before the head constable in charge of Kubdia outpost, against one Doorga Churn Ghose, a Government officer, and against his peon, under s. 342 of the Penal Code. The Police enquired into the case and reported that the charge was false.

On the 20th August, the Deputy Magistrate in charge of the subdivision recorded his order on the Police report to the effect, that the charge laid was utterly false, and recommended the Magistrate of the District to order the prosecution of Karimdad under s. 211 of the Penal Code. The Magistrate had previously summoned Karimdad to make his statement at headquarters before one of the Deputy Magistrates; he, however, neglected to attend.

On the 31st August, the Magistrate sanctioned the institution of proceedings against Karimdad under ss. 211 and 198 of the Penal Code, and directed the Deputy Magistrate to take up the case.

On the 21st September, the Deputy Magistrate, without going into the case, passed the following order:—"As without first hearing the case in which Karimdad is the complainant, a case under s. 211 of the Indian Penal Code cannot proceed, it is therefore ordered that the Police be directed to send up witnesses and Golok Sing, peon, as accused in the case in which Karimdad is the complainant, and the case be fixed for the 30th September. The witnesses present to appear on that day."

On the 30th September, Golok Sing was not present, and the Deputy Magistrate addressed the District Magistrate on the subject, and postponed the case until a reply was received.

The District Magistrate, considering that the course pursued by the Deputy Magistrate was wrong, transmitted the record, under s. 296 of Act X of 1872, to the High Court.

No one appeared before the High Court.

1880 The opinion of the Court (GARTH, C. J., and FIELD, J.) was
GOVERNMENT as follows :—

^{v.}
KARIMDAD.

We are unable to see that the orders passed by the Deputy Magistrate in this case are irregular or illegal. Whatever opinion may have been formed by the Magistrate upon the Police report as to the truth of Karimdad's complaint, when he appeared with his witnesses and asked to be allowed to prove his case, we think that the Magistrate could not, without hearing him and his witnesses, and deciding upon the truth or falsehood of his charge, proceed to put him on his trial under s. 211 of the Penal Code. It is manifest justice that a man ought not to be tried for making a false complaint until he has had an opportunity of proving the truth of the complaint made by him; and such opportunity should be afforded him, if he desire to take advantage of it, not before the Police, but before the Magistrate. If persons are to be prosecuted under s. 211 of the Penal Code upon the mere report of a Police officer that their complaints are not true, the Police are made the judges whether a complaint is true or false. Such a delegation of magisterial functions is not contemplated by the law, and it requires but little experience of this country to understand how dangerous it would be to the best interests of justice. Magistrates of all grades cannot understand too clearly that, while the Police perform their proper duty in collecting evidence, it is the function of the Magistrate alone to decide upon the sufficiency or credibility of this evidence when collected.

We decline to interfere (1).

(1) See *Empress v. Irad Ally*, I. L. R., 5 Calc., 869; *Empress v. Salih*, I. L. R., 5 Calc., 184; and *Ashruf Ali v. The Empress*, I. L. R., 1 All., 527; *Empress v. Abul Husain*, I. L. R., 5 Calc., 181. *Bhokte-*