CRIMINAL REVISION.

Before Mr. Justice Harington and Mr. Justice Holmwood.

1910
April 15.

RAMSEBAK LAL
v.
MUNESWAR SINGH.*

Acquittal—Acquittal under s. 182 of the Penal Code—Subsequent complaint under s. 500, by the person defamed, in respect of the same statement—Subsequent prosecution not barred—Criminal Procedure Code (Act V of 1898) s. 403.

An acquittal under s. 182 of the Penal Code in respect of false information contained in a petition to the manager of an estate is no bar to a subsequent prosecution for defamation under s. 500 of the Penal Code, on the same statements.

Sharbekhan Golain v. *Emperor* (1) distinguished.

THE petitioner, Ramsebak, who was a patwari of Janmubhai, submitted a petition, on the 13th October 1909, to the manager of the Bettiah Raj, through Ram Narayan Lal, head tehsildar of Sirsia cutcherry, alleging that Muneswar Singh, Sub-Inspector of Adapur, had wrongfully detained him in the thana lock-up for having given evidence against him in a tree-cutting case, and extorted Rs. 65 before releasing him. The petition was forwarded to the manager, who sent it to the District Superintendent of Police, and an enquiry was thereafter held into the charge and it was found false. The manager then granted sanction under section 195 of the Criminal Procedure Code to prosecute the petitioner under section 182 of the Indian Penal Code. The petitioner was tried for such offence and acquitted on the ground that the section did not apply, the person to whom the information was given not being a public servant, though the Magistrate held that the statements were absolutely false. On the 25th January 1910, Muneswar Singh filed a complaint before Babu H. L. Khastgir, Deputy

*Criminal Revision No. 288 of 1910, against the order of H. L. Khastgir, Deputy Magistrate of Champaran, dated Jan. 25, 1910.

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Magistrate of Champaran, charging the petitioner under section 500 of the Indian Penal Code in respect of the petition of the 13th October 1909, and the Magistrate issued a summons on the petitioner to appear before him on the 2nd February to answer the charge. The petitioner, thereupon, moved the High Court and obtained the present rule to quash the proceedings, on the ground that the second trial was barred under section 403 of the Criminal Procedure Code by reason of the acquittal in the first case.

Babu Dwarkanath Mitter and *Babu Manindranath Banerjee*, for the petitioner.

The Deputy Legal Remembrancer (*Mr. Orr*), for the Crown.

HARINGTON J. This is a rule calling upon the District Magistrate to show cause why the proceeding which has been instituted against the petitioner should not be stayed on the ground that, under the provisions of section 403 of the Code of Criminal Procedure, the petitioner is not liable to be tried for the offence charged against him.

The proceeding which is now pending against the petitioner is a prosecution for defamation under section 500 of the Indian Penal Code. The petitioner contends that he is protected under section 403, because he has been already tried and acquitted of an offence under section 182 of the Indian Penal Code in respect of the statement now alleged to be defamatory. The facts are that the accused gave a certain information to the manager of the Bettiah Raj which was untrue. He was prosecuted under section 182, but acquitted on the ground that the person to whom he gave the information was not a public servant within the purview of that section. That information was, as a matter of fact, defamatory of the person who was aggrieved in the present case, and it is in respect of the defamatory statements which were made to the manager of the Bettiah Raj that the present charge under section 500 was instituted.

In my opinion, section 403 is no bar to the present proceeding. The present petitioner certainly would not be liable to

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be tried again for the offence of giving false information to a public servant, nor, on the same facts, for any other offence for which a different charge from the one made against him might have been made under section 236 of the Criminal Procedure Code, or for which he might have been convicted under section 237. Section 236 deals with a case in which a single act, or a series of acts, is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, while section 237 provides that, in the case mentioned in section 236, if the accused is charged with an offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it. Neither of these sections applies in the present case. In my opinion, under section 237 it would certainly not have been open to the Court to convict the petitioner, when he was charged under section 182 of an offence under section 500, Indian Penal Code. The one is an offence committed against a public servant, which can only be prosecuted upon the complaint, or under sanction of the public servant injured, or of some one to whom he is subordinate. The offence under section 500 can only be prosecuted on the complaint of the person aggrieved by the defamation. In one case the offence is committed against a person to whom false information is given: in the other case it is committed against a person about whom a defamatory statement is made. The two offences, to my mind, are quite distinct, and the charges under them would have to be prosecuted under the authority of the different persons who are injured by them. The result is that, to my mind, section 403 is not applicable. There is no reason, therefore, to interfere with the proceedings, and the rule must be discharged.

HOLMWOOD J. The question which arises on this rule is whether an acquittal on a charge of giving false information to a public servant under section 182 of the Indian Penal Code, on the ground that the person to whom the information was

given was not a public servant, is a bar, within the meaning of section 403 of the Code of Criminal Procedure, to a trial for defamation under section 500 on the same statements.

It seems to me that the offences under section 182 and section 500 are distinct offences within the meaning of section 233 of the Criminal Procedure Code, and unless they come under any of the exceptions referred to in sections 234 to 236 and 239, the two charges must in law be tried separately. It appears that on the 13th of October 1909 the petitioner submitted a petition to one Ram Narain Lal, head tehsildar of the Sirsia cutcherry under the Court of Wards, which holds charge of the Bettiah Raj, making certain allegations against a Sub-Inspector of Police named Muneswar Singh.

These allegations were alleged by the Sub-Inspector to be false, and the said Ram Narain Lal was said to be a public servant. The tehsildar forwarded the petition, which contained a statement that the petitioner Ramsebak Lal had been wrongfully confined by Sub-Inspector Muneswar Singh, and only let off on paying him a bribe of Rs. 65, to the manager of the Bettiah Raj, Mr. Lowis, who sent the petition to the District Superintendent of Police for enquiry. Inspector Udit Narain Singh of the B Circle, after full enquiry, found the petition false and malicious, and requested that the petitioner should be prosecuted under section 182 of the Indian Penal Code "in order to put a stop to the submission of such malicious petitions, which cause an unnecessary trouble, labour, and waste of time of the higher authorities and enquiring officers."

By "enquiring officers" is meant the police, and the footing upon which the prosecution was suggested was that the petitioner intended by his petition to cause the police to do something to the injury and annoyance of the Sub-Inspector Muneswar Singh.

Mr. Lowis gave sanction, under section 195 of the Criminal Procedure Code, to the prosecution of the petitioner under section 182, on the 15th November 1909, on the written request of the Superintendent of Police, and the Court Inspector was ordered, on the 16th November, to apply for the prosecution

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of Ramsebak Lal. The District Magistrate's order on this, dated 16th November 1909, is—"The S. P. (Superintendent of Police) applies for prosecution of Ramsebak Lal under section 182 of the Indian Penal Code. Prosecute Ramsebak: section 182. Issue summons against him. Fix 25th November. Police to send up prosecution witnesses on that date."

It is clear, therefore, that Muneswar Singh, who now seeks to prosecute Ramsebak Lal under section 500 of the Indian Penal Code, did not obtain the sanction to prosecute under section 182 of the Indian Penal Code, and was not the prosecutor, but only the principal witness for the Crown.

If the tehsildar had been a public servant, it is obvious that two distinct offences were committed by the accused in one series of acts so connected together as to form the same transaction, and the case falls under section 235 (*1*) of the Code of Criminal Procedure, and under no other of the exceptions in sections 234, 235, 236 and 239. That being so, the present prosecution under section 500 of the Indian Penal Code is clearly saved by the express provisions of section 403 (*2*), and we are bound to discharge this rule. It is further doubtful whether a charge under section 500 could have been added on the trial under section 182 held at the instance of the District Superintendent of Police.

To start a case under section 500, a sworn petition by the person aggrieved on his own initiative would be necessary. Such a petition could hardly be put in by a subordinate Police Officer while he was prosecuting a charge for contempt of the lawful authority of public servants under orders of his superior, the District Superintendent of Police, and in any case there could be no obligation on him to join his personal action under Chapter XXI of the Indian Penal Code with the Crown prosecution under Chapter X.

The ruling in *Sharbekhan Gohain* v. *Emperor* (1) has no application to the present case, since there both offences were under Chapter X, and although section 201 requires no sanction, it covers the minor offence under section 176, which does

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require sanction, and, therefore, falls under section 235 (2). Further, there was a finding in the judgment under section 182 that the statements were absolutely false, and the acquittal was solely on the ground that the tehsildar was not a public servant.

Although, therefore, the finding of the Magistrate in the section 182 case cannot be in any way allowed to prejudice the accused in the section 500, Indian Penal Code case, it is clear that the question of malice has not at all been tried, and the accused has not been acquitted of any charge involving malice. That is a question which has to be tried on evidence which would be irrelevant in a trial under section 182 of the Indian Penal Code.

For all these reasons I agree with my learned brother that this rule must be discharged, and that the case under section 500 brought by the aggrieved person, Muneswar Singh, must be tried on its merits.

Rule discharged.

E. H. M.