1909

MAUNG THA HNYIN v. MAUNG MYA SU.

in date is immaterial. But it is difficult to see how the plaintiff could be barred or affected by a decree in a suit to which he was not a party.

Their Lordships are, therefore, of opinion that the judgment of the Chief Court should be reversed with costs to be paid by the appellants in that Court, the representatives of Abdul Guffoor, the decree of the District Judge discharged, and the suit remanded to the District Judge for findings on issues 3 and 4, with an enquiry as to priority between the plaintiff and Abdul Guffoor and for retrial. The District Judge will deal with the costs not dealt with by this judgment.

Their Lordships will humbly advise His Majesty accordingly.

The last three respondents, the representatives of Abdul Guffoor, who alone appealed to the Chief Court, will pay the costs of the appeal.

J. V. W. *Appeal allowed.*

Solicitors for the appellants: *Bramall & White.*

CRIMINAL REVISION.

Before Mr. Justice Mookerjee and Mr. Justice Chatterjee.

JADU NANDAN SINGH

v.

EMPEROR.*

1909

Nov. 15.

Jurisdiction of Criminal Court—Order directing prosecution for instituting a false case—False information to the police—Subsequent complaint before the Magistrate—Grounds of the exercise of such jurisdiction—Criminal Procedure Code (Act V of 1898), ss. 195 (b) and 476.

Section 476 of the Criminal Procedure Code must be read subject to the restrictions contained in section 195 (*b*), and does not, therefore, empower a Court to direct a prosecution for making a false charge before the police.

Dharmadas Kawar v. *King-Emperor* (1) followed.

* Criminal Revision No. 1019 of 1909, against the order of H. Foster, Sessions Judge of Saran, dated Aug. 9, 1909.

(1) (1908) 7 C. L. J. 373.

Lalji Gope v. *Giridhari Chaudhury* (1) referred to

In re Devji (2), *Akhil Chandra De* v. *Queen-Empress* (3), *Abdul Rahman* v. *Emperor* (4), and *Haibat Khan* v. *Emperor* (5) distinguished.

But if the informant, upon the police reporting the information to be false, subsequently petitions the Magistrate for a judicial inquiry, he must be taken to have preferred a complaint, and section 476 would then apply.

Queen-Empress v. *Sham Lall* (6), *Queen-Empress* v. *Sheik Beari* (7), and *Jogendra Nath Mookerjee* v. *Emperor* (8) referred to.

No sanction should be granted, or prosecution directed, unless there is a reasonable probability of conviction, though the authority granting a sanction under section 195, or taking action under section 476, should not decide the question of guilt or innocence. Great care and caution are required before the Criminal law is set in motion, and there must be a reasonable foundation for the charge in respect of which a prosecution is sanctioned or directed.

Ishri Prasad v. *Sham Lal* (9), *Kali Charan Lal* v. *Basudeo Narain Singh* (10), and *Queen* v. *Baijoo Lal* (11) referred to.

Where there had been prolonged litigation between the petitioner and the opposite party, in which the former had been successful, so that the case was by no means improbable, and two Magistrates had, in the course of the judicial investigations preceding the trial, accepted the prosecution story as substantially true, and the Assessors had only found the case not proved:—

Held, that, under the circumstances, it was not a proper case for a prosecution under section 476 of the Code.

ON the 2nd May 1909 the petitioner lodged an information, under section 154 of the Criminal Procedure Code, at the Ekma police station, against Joynarain Roy and five others, of offences under sections 395 and 412 of the Penal Code, which the police reported to be false on the 9th of May. The petitioner then filed a petition before the Deputy Magistrate of Chapra, on the 11th, impugning the police report and praying for a judicial investigation, which was ordered, and was held by a subordinate Magistrate. The accused were then summoned and, after a preliminary investigation, committed to the Sessions. They were tried before Mr. H. Foster, Sessions Judge of Saran, and two Assessors, and acquitted on the 26th July. The Judge thereupon drew up a proceeding under section 476

(1) (1900) 5 C. W. N. 106.
(2) (1893) I. L. R. 18 Bom. 581.
(3) (1895) I. L. R. 22 Calc. 1004.
(4) (1907) 7 C. L. J. 371.
(5) (1905) I. L. R. 33 Calc. 30.
(6) (1887) I. L. R. 14 Calc. 707.
(7) (1887) I. L. R. 10 Mad. 232.
(8) (1905) I. L. R. 33 Calc. 1.
(9) (1885) I. L. R. 7 All. 871.
(10) (1907) 12 C. W. N. 3.
(11) (1876) I. L. R. 1 Calc. 450.

1909

JADU NANDAN SINGH v. EMPEROR.

of the Criminal Procedure Code, and called upon the petitioner to show cause why his prosecution, under section 211 of the Penal Code, should not be directed in respect of the false information to the police on the 2nd May and the complaint to the Magistrate on the 11th instant. Cause was shown, but the Judge directed the case to be sent to the District Magistrate of Saran for enquiry or trial.

Babu Dasharathi Sanyal and *Babu Abanibhushan Mookerjee*, for the petitioner.

Babu Manmatha Nath Mukerjee, for the Crown.

MOOKERJEE AND CHATTERJEE JJ. We are invited in this Rule to set aside an order made by the Sessions Judge of Saran under section 476 of the Criminal Procedure Code. The circumstances under which the order in question was made may be briefly narrated. On the 2nd May 1909, Jadu Nandan Singh, the petitioner before us, informed the police that Joynarain Roy and five other persons had robbed him and committed offences punishable under sections 395 and 412 of the Indian Penal Code. The police reported the case to be false, whereupon the petitioner applied for a judicial enquiry into the matter. The accused were subsequently committed to take their trial in the Court of Sessions, but the Sessions Judge, in agreement with both the Assessors, found them not guilty and acquitted them. At the same time the Sessions Judge called upon the complainant to show cause why his prosecution should not be directed for an offence under section 211 of the Indian Penal Code, inasmuch as he had brought a false case against the accused. Cause was shown, but the Sessions Judge overruled all the objections and sent the case to the District Magistrate of Saran for enquiry and trial on the ground that the petitioner had lodged a false first information at the Ekma police station on the 2nd May 1909, and had caused to be recorded a false complaint before the Deputy Magistrate of Chapra on the 11th May 1909. The legality of this order has been called in question before us substantially on two

grounds : namely, *first*, that it was not competent to the Sessions Judge to make an order under section 476, inasmuch as the alleged offence had not been committed before a Court of Justice or brought to his notice in the course of a judicial proceeding ; and, *secondly*, that, upon the facts and circumstances of the case, the order should not have been made.

In support of the first ground, it has been urged by the learned vakil for the petitioner that section 476 has to be read with section 195, and that, as the alleged offence under section 211 of the Indian Penal Code has, if at all, been committed in the course of a police investigation, and not in relation to any proceeding in a Court, section 476 has no application. This position has been sought to be maintained by a reference to the decisions of this Court in the cases of *Abdul Rahman* v. *Emperor* (1) and *Dharmadas Kawar* v. *King-Emperor* (2). In answer to this contention, it has been argued by the learned vakil, who appears on behalf of the Crown, that section 476 refers to the offences mentioned in section 195, apart from the qualifications as to the place in which, or the person by whom, such offences may have been committed, and that in substance the restrictions mentioned in section 195 cannot be incorporated into section 476. In support of this view, reliance has been placed upon the cases of *In re Devji* (3) and *Akhil Chandra De* v. *Queen-Empress* (4). To determine which of these two contentions ought to prevail, it is necessary to examine closely the provisions of sections 195 and 476.

Clause (*b*) of section 195, in so far as it is applicable to the case before us, provides that no Court shall take cognizance of any offence punishable under section 211 of the Indian Penal Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction or on the complaint of such Court or of some other Court to which such Court is subordinate. It cannot be disputed that, in order to make this provision of the law applicable, the false statement must have been made in a Court or in relation to any

(1) (1907) 7 C. L. J. 371.
(2) (1908) 7 C. L. J. 373.
(3) (1893) I. L. R. 18 Bom. 581.
(4) (1895) I. L. R. 22 Calc. 1004.

1909

JADU NANDAN SINGH v. EMPEROR

proceeding in a Court, and that no sanction is consequently necessary when false evidence is alleged to have been fabricated during a police investigation; in other words, no sanction is required to prosecute a person for having instituted a false charge before the police: *Jagat Chandra Mozumdar* v. *Queen-Empress* (1), *Putiram Ruidas* v. *Mahomed Kasem* (2), *Ramasami* v. *Queen-Empress* (3). The position, therefore, so far as section 195 is concerned, is beyond dispute. Let us now turn to section 476. That section—we quote only so much of it as applies to the present case—provides that, when any Criminal Court is of opinion that there is ground for enquiring into any offence referred to in section 195 and committed before it, or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary enquiry that may be necessary, may send the case for enquiry or trial to the nearest Magistrate of the first class. The whole question turns upon the effect to be attributed to the words "any offence referred to in section 195." Do these words mean, as contended on behalf of the Crown, the offences covered by the sections of the Indian Penal Code mentioned in section 195, or do they mean, as contended on behalf of the petitioners, the offences mentioned in those sections and committed under the qualifying circumstances described in section 195? The cases of *In re Devji* (4) and *Akhil Chandra De* v. *Queen-Empress* (5) seem to support the view that the qualifying circumstances mentioned in section 195 are not to be treated as incorporated into section 476. It is worthy of note, however, that both these cases turn upon section 478 read with clause (c) of section 195, and may, to this extent, be regarded as not directly in point. It is further to be remarked that the learned Judges who decided those cases ruled that the offence of forgery gave the Court jurisdiction to proceed under section 478, whether it had been committed by a party to the proceeding or by a witness, or whether it had been committed in respect of

(1) (1899) I. L. R. 26 Calc. 786.
(2) (1895) 3 C. W. N. 33.
(3) (1884) I. L. R. 7 Mad. 292.
(4) (1893) I. L. R. 18 Bom. 581.
(5) (1895) I. L. R. 22 Calc. 1004.

a document merely produced, but not given in evidence. It has been suggested before us that there may be a distinction, possibly somewhat subtle, but nevertheless quite appreciable, between the element of person by whom an alleged offence is committed or subject matter in respect of which the commission of the offence is charged, as in the cases to which reference has been made, and the element of place where the offence is committed as in the case before us. We observe, further, that judicial opinion is by no means uniform, even so far as the point directly raised in these two cases is concerned, for in *Abdul Khadar* v. *Meera Saheb* (1) it was ruled by the learned Judges of the Madras High Court that when an offence is alleged to have been committed under section 471 of the Indian Penal Code, section 478 of the Criminal Procedure Code ought to be read with the qualifications mentioned in section 195, clause (*c*), so as to make section 476 inapplicable if the alleged offence has been committed in respect of a document not given in evidence. On the other hand, so far as sections 476 and 195, clause (*b*), are concerned, we have the case of *Dharmadas Kawar* v. *King-Emperor* (2), which is directly in point. In that case, a false information was given to the police in regard to the death of a girl. The informant was directed to be prosecuted under section 211 of the Indian Penal Code. This order, made under section 476, was questioned, on the ground that the alleged offence had not been committed in, or in relation to, any proceeding in any Court. The objection prevailed, and the learned Judges held that, as the offence, if any, was committed before the police and not before any Court, or in the course of any judicial proceeding or of any proceeding in any Court, the Sessions Judge had no jurisdiction to make an order under section 476. The same view appears to be supported by the observations of this Court in *Lalji Gope* v. *Giridhari Chaudhury* (3), where the order under section 476 was maintained, not on the ground that a false report had been made to the police, but on the ground that subsequently

(1) (1892) I. L. R. 15 Mad. 224. (2) (1908) 7 C. L. J. 373.
(3) (1900) 5 C. W. N. 106.

1909

JADU NANDAN SINGH v. EMPEROR.

the informant had lodged a false complaint before the Magistrate who investigated the matter on receipt of the police report. We may add that the case of *Abdul Rahman* v. *Emperor* (1), as well as the decision in *Hxibat Khan* v. *Emperor* (2), upon which it is based, are distinguishable. These decisions appear to have proceeded on the ground that a Magistrate who has made over a case to another Magistrate for judicial enquiry cannot himself direct a prosecution under section 476 in respect of an alleged false information given to the police, because the matter did not come to his cognisance in the course of a judicial proceeding. The result of the authorities, therefore, is that, upon the question of the effect of clause (*c*) of section 195 upon section 478, judicial opinion is divided; but upon the question of the effect of clause (*b*) of section 195 upon section 476, we have recent decisions of this Court in favour of the view that the qualification mentioned in the former section is to be treated as incorporated in the latter provision. Upon the arguments which have been addressed to us, we are not prepared, as at present advised, to dissent from this view. We must, therefore, uphold the contention of the petitioner that it was not competent to the learned Sessions Judge to make an order under section 476 in respect of the alleged false information lodged at the Ekma police station on the 2nd May 1909. In respect, however, of the second part of the order, which relates to the alleged false complaint made before the Deputy Magistrate of Chapra on the 11th May, the position is entirely different. It is clear that when the police reported the complaint to be false, the petitioner insisted upon a judicial investigation, and he must consequently be taken to have preferred a complaint to the Magistrate. It is sufficient, in support of this view, to refer to the cases of *Queen-Empress* v. *Sham Lall* (3), *Queen-Empress* v. *Sheik Beari* (4), and *Jogendra Nath Mookerjee* v. *Emperor* (5). The second part of the order, therefore, cannot be treated as made without jurisdiction.

(1) (1907) 7 C. L. J. 371.
(2) (1905) I. L. R. 33 Calc. 30.
(3) (1887) I. L. R. 14 Calc. 707.
(4) (1887) I. L. R. 10 Mad. 232.
(5) (1905) I. L. R. 33 Calc. 1.

This renders necessary an examination of the second ground upon which the propriety of the order is challenged.

In respect of the second ground, it has been urged that, upon the circumstances as disclosed in the evidence adduced before the Court of Sessions, the case is at best doubtful, and proceedings ought not to have been commenced under section 476 of the Criminal Procedure Code. In our opinion there is considerable force in this contention. The learned Sessions Judge has discredited the entire prosecution case on the ground that the complainant could not possibly have been present at the place of the alleged robbery, and the incident is so improbable that it must be treated as mythical. We are unable to accept this view of the case. There can be no question that there had been prolonged litigation between the complainant and the party represented by the accused in the Criminal, Revenue and Civil Courts, and that the complainant had ultimately succeeded in his endeavour to recover and retain possession of the property in which the accused and their masters were interested. The subsequent incident, which is the foundation of the present complaint, is, in our opinion, by no means improbable. We must further bear in mind that in the course of the judicial investigations which preceded the trial, two Magistrates had found that a *primâ facie* case had been made out and accepted the prosecution story as substantially true. The Assessors also, who found the accused not guilty, merely came to the conclusion that the case was not proved. Under these circumstances, we are unable to hold that this is a proper case in which proceedings ought to be commenced under section 476 of the Criminal Procedure Code. The principle which should guide Courts in taking action under section 195 or 476 is now well settled. No sanction should be granted unless there is a reasonable probability of conviction. It would be an abuse of the powers vested in a Court of Justice if sanction were given or upheld on the principle that, though the conviction of the party complained against is a mere possibility, it is desirable that the matter should be threshed out, so that it may be decided whether or not an offence has been committed,

1909

JADU NANDAN SINGH v. EMPEROR.

No doubt the authority which is called upon to grant a sanction under section 195, or to take action under section 476, need not, and should not, decide the question of guilt or innocence of the party against whom proceedings are to be instituted; but great care and caution are required before the Criminal law is set in motion, and there must be a reasonable foundation for the charge in respect of which prosecution is sanctioned or directed. It is sufficient, in support of this view, to refer to the cases of *Ishri Prasad* v. *Sham Lal* (1), *Kali Charan Lal* v. *Basudeo Narain Singh* (2), *Queen* v. *Baijoo Lall* (3). Upon an examination of the circumstances of the case before us, we are satisfied that sufficient grounds have not been made out to justify the initiation of any proceeding under section 476 of the Criminal Procedure Code. The result, therefore, is that the Rule must be made absolute, and the order of the Court below discharged.

Rule absolute.

E. H. M.

(1) (1885) I. L. R. 7 All. 871. (2) (1907) 12 C. W. N. 3.
(3) (1876) I. L. R. 1 Calc. 450.