

CRIMINAL REVISION.

*Before Sir Laurence H. Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice Carnduff.*

LEE

v.

ADHIKARY.*

1909

Nov. 9.

Criminal proceedings, legal institution of—Police report not disclosing nature of information—First information report omitting to state the information received—Information given by police officer to himself—Criminal Procedure Code (Act V of 1898) ss. 154, 173, 190 (1) (b).

A prosecution is not legally instituted under s. 190 (1) (b) of the Criminal Procedure Code when the police report under s. 173 does not set forth the nature of the information, and the first information report under s. 154 is equally defective in this respect.

THE petitioner, E. O. Lee, was a Permanent-way Inspector of the East Indian Railway in charge of the Section between Sainthia and Azimgunge stations. On the 14th June 1908 he was engaged in certain repairs to a bridge between Sainthia and Mollarpur after having, it was alleged, delivered caution messages to the Station Masters of these stations advising them of the fact, and placed danger signals and detonators on the line at three-fourth mile on either side of the bridge. After the work on the bridge had commenced, a down goods train from Mollarpur was sighted coming along without relaxing speed, whereupon the petitioner, as was stated by him in his petition, tried to stop it, but the train passed on to the bridge and partly fell into the river through a gap, and some men were injured. The petitioner alleged that he gave information of the occurrence to the Sub-Inspector, H. L. Adhikary, and brought him on his trolley to the scene of the accident, when the latter held an enquiry and recorded the statements of several witnesses who supported his story. On the following day an enquiry was made by the

* Criminal Revision No. 1202 of 1909, against the order of H. A. Lane, Deputy Magistrate of Suri, dated Sept. 21, 1909.

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Railway authorities, and on the 16th and 21st November further police investigations were held by the Assistant Inspector-General of Police and an Inspector of Police respectively. The petitioner was suspended on the 28th instant.

On the 6th July H. L. Adhikary recorded a first information report under section 154 of the Criminal Procedure Code, the material portion of which was as follows :—

<i>Name and residence of informant or complainant.</i>	<i>Name and address of accused.</i>	<i>Brief description of offence, etc.</i>	<i>Steps taken regarding investigation, etc.</i>
H. L. Adhikary, S.I., Govt. R.P., Sainthia.	E. O. Lee, P. W. I., Rampurhat.	Section 101, Act IX of 1890. Neglecting to put danger signals and fog signals on the line before opening the rail at the bridge.	On receipt of P. W. L. D. E. No. 559G of 24th June 1909, with Assistant Inspector-General's order of date, I instituted the case. (Sd.) H. L. ADHIKARY, Sub-Inspector.

(First Information to be recorded below.)

According to the order of the Assistant Inspector-General of date I instituted the case.

6th July 1908.

(Sd.) H. L. ADHIKARY,
Sub-Inspector.

The petitioner was arrested on the 12th July at Calcutta by H. L. Adhikary and released on bail. On the 14th a police report under section 173, termed a charge sheet, was sent in by the Sub-Inspector, stating merely the name and address of the informant, the section of the law, the names and addresses of the witnesses and the fact of the taking of bail. On the 21st September the petitioner appeared before the Deputy Magistrate of Suri, to whom the case was transferred by the District Magistrate, and submitted that the proceedings against him had not been legally instituted; and obtained time to move the High Court.

Mr. K. N. Chaudhuri (with him Babu Manmatha Nath Mukerjee), for the petitioner. There was no compliance with

the provisions of sections 154 and 173 of the Code. The former contemplates an information by a person other than the recording officer, and requires the information to be stated. The Sub-Inspector held no investigation *suo motu*, but submitted a report under section 173 which did not set out the nature of the information received. It was of vital importance in this case that this should have been done. No cognizance can be taken by a Magistrate on such a police report under such circumstances.

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No one appeared for the Crown.

JENKINS C.J. AND CARNDUFF J. In this case a Rule has been issued calling upon the District Magistrate to show cause why the proceeding against the petitioner should not be quashed on the ground that the prosecution has not been legally instituted, or, in the alternative, why the case should not be transferred to some competent Magistrate in Alipore or some other district.

The grounds on which it is said that the prosecution has not been legally instituted are briefly these. Section 190 of the Criminal Procedure Code describes the conditions requisite for the initiation of proceedings, and it is thereby provided that the Magistrate "may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such an offence; (b) upon a police report of such facts; (c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed." We are told by the applicant that in this case it is suggested on the part of the prosecution that cognizance has been taken under clause (b), that is, upon a police report of such facts. Now, section 173 indicates what that police report should set forth, and provides that a police report should set forth, among other things, the nature of the information. It is pointed out that in the circumstances of this case it is of paramount importance that at this initial stage it should appear what the nature of the information is. The petition sets forth the case of the present applicant in

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considerable detail indicating precisely what he did, and the precautions that he took. If this version be accepted as true, it is difficult to see how any case can succeed against him. Not only has the applicant set out his case in the way I have described, but no cause has been shown against the present application, nor have his allegations been questioned in any manner. Now, as a matter of fact, the police report which has been shown to us in this case does not set forth the nature of the information, it is absolutely silent on that point; and it would seem that the form ordinarily adopted in these cases is equally defective. In the circumstances, we set aside the proceedings. If it is intended to proceed against the present applicant, then the procedure of the Code as indicated in section 190 and also in section 173, if it be requisite to rely on that section, must be followed.

Rule absolute.

E. K. M.

CRIMINAL REVISION.

Before Mr. Justice Chatterjee and Mr. Justice Ryves.

1909
 Sept. 30.

ABDULLAH KHAN

v.

EMPEROR.*

"Judicial proceeding"—Preliminary inquiry by an Assistant Settlement Officer to determine whether a prosecution should be directed—Power to take evidence on oath in such inquiry—False evidence in the course of the inquiry—Criminal Procedure Code (Act V of 1898) ss. 4 (m) and 476—Indian Penal Code (Act XLV of 1860) s. 193 and Explanation (2)—Oaths' Act (X of 1873) s. 4—Government Rules under the Bengal Tenancy Act (VIII of 1885), Rule 40.

A Court holding a preliminary inquiry under s. 476 of the Criminal Procedure Code may legally take evidence on oath therein, and the inquiry is, therefore, a "judicial proceeding" within the terms of s. 4 (m) of the Code.

Raghoobans Sahoy v. Kokil Singh (1) and *Emperor v. Gopal Barik* (2) referred to.

* Criminal Revision No. 1004 of 1909, against the order of C. W. E. Pittar, Sessions Judge of Patna, dated Aug. 9, 1909.

(1) (1890) I. L. R. 17 Calc. 872, 875. (2) (1906) I. L. R. 34 Calc. 42, 46.