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may be sold out gradually and be replenished from time to time, and it is impossible for the absent principal to know whether at one time his agent had 150 tins on his behalf or on behalf of the other firms. Even though the Act provides a personal penalty, we think the only person that can be punished is the one who keeps petroleum or carries it about or puts more than 150 tins at one place. For these reasons, the Rule must be made absolute, and the conviction and sentence set aside. The fines if paid must be refunded.

E. H. M. *Rule absolute.*

APPELLATE CRIMINAL.

Before Sharfuddin and Coxe JJ.

DILAN SINGH

v.

EMPEROR.*

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Aug. 26.

Jurisdiction of Criminal Court—Complaint—Irregularity—Criminal Procedure Code (Act V of 1898) ss. 195, 476, 532, 537—Order for prosecution—Penal Code (Act XLV of 1860) s. 211—False charge laid before the police—Police report—Judicial inquiry—Commitment to the Court of Sessions.

A conviction by the Court of Sessions cannot be set aside simply on the ground of a defect in the initiation of the proceedings in the Committment Court or on the ground of some irregularity in the commitment proceedings more especially when that point was not raised in the lower Court. S. 532 of the Criminal Procedure Code would cure such a defect.

Haibat Khan v. *Emperor* (1) distinguished.

*Criminal Appeal No. 576 of 1912 against the order of C. E. Pittar, Sessions Judge of Gaya, dated July 9, 1912.

(1) (1905) I. L. R. 33 Calc. 30.

Abdul Rahman v. *Emperor* (1) and *Queen-Empress* v. *A. Morton and Moorteza Alè* (2) referred to.

Recommendation for prosecution by a police-officer under s. 211 of the Penal Code comes within the meaning of the word "complaint" as used in s. 195 of the Criminal Procedure Code, as that section clearly contemplates prosecution at the instance of police-officers.

THE facts shortly are these. On the 21st of January 1912, the petitioner laid an information before Sub-Inspector Rajendra Pershad in charge of Fatehpore police station in the district of Gaya, charging one Fazal Hussain and others with coming into his *kutchery*, catching hold of him, beating him, shutting him up in a room and then setting fire to the thatch of the *kutchery* building. The police enquired into the case, found it false and asked for the prosecution of the petitioner and one Karu Singh under sections 182 and 211 of the Indian Penal Code for bringing a false case.

The police report was duly placed before Mr. N. N. Gupta, Deputy Magistrate in charge. He examined one Begraj Mahton and one Samiri Kaharni and on the 6th of March made the following order:—

"Prosecute the complainant under s. 211 of the I. P. C. and draw up a proceeding."

In pursuance of the order aforesaid, a proceeding purporting to be under s. 476 of the Criminal Procedure Code, was drawn up directing the prosecution of the petitioner under s. 211 of the Penal Code for falsely charging Fazal and others "before Sub-Inspector Rajendra Pershad of police station Fatehpore with having committed mischief by setting fire to a dwelling place and dacoity of property valued at Re. 1-12, under ss. 436 and 395 of the Penal Code, knowing that there was no just or lawful ground for such charge against him."

(1) (1907) 7 C. L. J. 371. (2) (1884) I. L. R. 9 Bom. 288.

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This was followed by a preliminary inquiry which terminated, on the 30th of May 1912, in the commitment of the petitioner to the Court of Sessions to take his trial under s. 211 of the Penal Code.

On the 9th of July 1912, the petitioner was convicted and sentenced to three years' rigorous imprisonment by the Sessions Judge of Gaya.

Against this order the petitioner appealed to the High Court.

Mr. P. L. Roy and *Babu Sivanandan Roy*, for the appellants.

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

SHARFUDDIN AND COXE JJ. The appellant in this case has been convicted under section 211 of the Indian Penal Code of instituting false criminal proceedings before the Sub-Inspector of Fatehpore police station against one Fazal Hussain and others.

It appears that there was some dispute about the possession of the village Manhona and the zamindari kutchery therein, between Karu Singh, who is one of the ticcadars of the village, and Amiral Hossain, who is a lessee from Kali Singh, another ticcadar. The accused, Dilan Singh, admittedly went to the thana and there lodged information before the Sub-Inspector, Rajendra Narain Varma, that while he was sitting in the kutchery Fazal Meah and others came there, caught hold of him, beat him, shut him up in a room in the kutchery and then set fire to the thatch of the kutchery building: that he raised an alarm and the villagers came and rescued him. The Sub-Inspector, on enquiry, did not believe this story. The words of his final report are "I therefore submit the final report in the case and recommend that Dilan

Singh and Karu Singh may be prosecuted under sections 182 and 211."

The prosecution of the accused was then directed by a Deputy Magistrate. A preliminary inquiry was made and the accused was committed to the Court of Sessions. The learned Sessions Judge agreeing with both the Assessors has convicted the accused under section 211 and has sentenced him to three years' rigorous imprisonment.

The learned counsel, who appears on behalf of the appellant, argues in the first place that the conviction is bad inasmuch as the first Deputy Magistrate had no jurisdiction to direct the prosecution of the accused under section 476 of the Criminal Procedure Code, and reliance has been placed on the case of *Haibat Khan* v. *Emperor* (1) and that of *Abdul Rahman* v. *Emperor* (2). The case of *Haibat Khan* (1) seems to us to be quite distinguishable, because in that case there had been no commitment nor was the accused convicted at the Sessions Court. It seems to us clear that this makes a very considerable difference. Even if there is any defect in the initiation of the proceedings in the Original Court, still when the accused has been committed for trial to the Court of Sessions, a conviction by the Court of Sessions cannot, in our opinion, be set aside simply on the ground of some irregularity in the commitment proceedings more especially when that point was not raised in the first Court. In circumstances which are not wholly dissimilar, the Bombay High Court held that section 532 would cure such a defect: *see* the case of *Queen-Empress* v. *A. Morton and Moorteza Ali* (3). In the case of *Abdul Rahman* (2), though the learned Judges purported to follow the case of *Haibat Khan* (1), they

(1) (1905) I. L. R. 33 Calc. 30. (2) (1907) 7 C. L. J. 371.

(3) (1884) I. L. R. 9 Bom. 288.

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went very considerably beyond the decision in the former case. That case, however, is distinguishable from the present case because of the circumstance that the police officer in this case has recommended the prosecution under section 211. It has been argued that that recommendation cannot be regarded as a complaint because the complainant was not examined on oath. Certainly it is not a complaint as defined in the Code inasmuch as that definition expressly excludes a report of a police officer. But it appears to us to come within the meaning of the word "complaint" as used in section 195, as that section clearly contemplates prosecutions at the instance of police officers. In any case when a police officer asks that a person should be prosecuted under section 211 for information given to him, and gives evidence himself in support of that charge we cannot see that any serious irregularity can arise in the conviction of the accused in proceedings initiated upon that report. The order of the first Deputy Magistrate purporting to be one under section 476 might in that case be regarded as surplusage. We do not, therefore, think that effect can be given to the point of law raised by the learned counsel. We are not prepared to say that there has been any real irregularity inasmuch as the accused has been prosecuted at the request of a person who was entitled to ask for a prosecution. But if there has been any irregularity it certainly, in our opinion, is such a one as is cured by section 532 or 537 of the Criminal Procedure Code. On the facts the evidence is altogether one-sided. It is common ground that the kutchery building was set on fire by one side or the other. The whole of the evidence is that it was not set on fire by Fazal Meah and indeed Fazal Meah had no apparent motive beyond the ties of friendship to burn the kutchery and to attempt to burn Dilan Singh. There

are small defects apparently in the story of the prosecution, as there are in all such stories, but the learned Judge has dealt with them in his judgment and his discussion of them and the conclusions that he has arrived at with respect to them appear to us to be reasonable. We, therefore, think that the conviction is right. The sentence is not excessive.

The appeal is accordingly dismissed.

S. K. B. *Appeal dismissed.*

APPELLATE CIVIL.

Before Mookerjee and Beachcroft JJ.

HARIHAR GURU

v.

ANANDA MAHANTY.*

Refund of Court-fee—Appeal, over-valuation of—Partial decree—Memorandum of appeal, over-valuation of—Court-fee paid in excess by inadvertence—Practice.

The appellant's agent having, by inadvertence, over-paid court-fee on the memorandum of appeal, the High Court directed the Taxing officer to issue the necessary certificate to enable the appellant to obtain a refund of the excess court-fee from the Revenue authorities.

In the matter of Grant (1) referred to.

THE appellant, in this appeal, having paid an excess court-fee on the memorandum of appeal, applied to the Court for a refund of the amount paid in excess in the following terms:—

"That your petitioner filed on the 24th of June 1912 the above appeal before this Honourable Court against a partial decree amounting to

* Application in Appeal from Original Decree, No. 198 of 1912.

(1) (1870) 14 W. R. 47.