

# ALLAHABAD HIGH COURT

Emperor

Vs

Hardwar Pal

(Karamat Husain and Tudball, JJ.)

11.05.1912

## JUDGMENT

### **Karamat Husain and Tudball, JJ.**

1. The applicant here went to a police station and made a report against several persons, of whom Sher Bahadur Singh was one. He accused them of the offences of rioting and voluntarily causing hurt. The police made inquiry and sent up several persons for trial, but not Sher Bahadur Singh.
2. The Magistrate tried the accused and the trial ended in the conviction of some of them. These latter appealed to the Sessions Judge, who acquitted them.
3. Thereupon Sher Bahadur Singh made a complaint to the Magistrate, stating the above facts against the present applicant, and charging the latter with having made a false report in respect to himself to the police, which, he said, constituted an offence under Section 211 of the Indian Penal Code.
4. Objection was taken that the Magistrate could not take cognizance of the complaint without sanction obtained, and the terms of Section 195 of the Code of Criminal Procedure were invoked to support the argument. The Magistrate has held that sanction is not necessary ; hence the present application.
5. The facts stated in the complaint clearly constitute an offence under Section 182 of the Indian Penal Code, i.e., the giving of false information to the police, but it has been held by this High Court that they also constitute an offence under the first half of Section 211 of the Indian Penal Code.
6. The argument which found favour with the court below is as follows. If the complaint had been made of an offence under Section 182 of the Indian Penal Code on the facts of the present case the sanction of the police officer would have been necessary under Section 195(1)(a),

Criminal Procedure Code, but that Clause makes no mention of an offence punishable under Section 211 of the Indian Penal Code ; therefore as the complaint is laid under this latter section, no sanction is necessary. Section 195(1)(b) relates only to proceedings in Court. This may perhaps be the natural result of the decision that the making of a false report to the police where the case has not come into court constitutes an offence under Section 211 of the Indian Penal Code as well as one under Section 182, but it leads to this absurdity that in the case of the lesser offence under Section 182 a sanction is a sine qua non, whereas in the case of the more serious offence under Section 211 a sanction is not at all necessary. It is unnecessary to set forth the reasons why the law lays down the necessity of a sanction in cases of the class mentioned in Section 195 of the Code of Criminal Procedure. It is obvious that they operate in the cases of both Sections 182 and 211 of the Indian Penal Code, and it was never intended by the Legislature that complaint should be made in the circumstances of the present case without the sanction of the police officer concerned.

7. The difficulty might be solved by holding that in taking cognizance in the present case of an offence under Section 211, the Magistrate is also taking cognizance of an offence under Section 182, which he is forbidden to do by the terms of Section 195 of the Code of Criminal Procedure without the sanction of the police officer concerned. He is, therefore, doing what is forbidden by the Code, and his action is illegal and ultra vires. The true solution may be as suggested by counsel for the applicant, that the Legislature never intended Section 211 of the Indian Penal Code to apply to anything except charges preferred in court to a Magistrate, and enacted Section 182 to cover such a case as the present. However, there are the rulings of this Court and other High Courts on the subject, and as we are able in the circumstances of the present case to do justice without going behind those rulings, it is, therefore, unnecessary to discuss the point further. In the present case, there were proceedings in court. On the basis of the alleged false report the police made inquiry and sent up some of the accused for trial. Assuming that Hardwar Pal falsely implicated Sher Bahadur Singh in his report, and that the offence he thereby committed was one under the first paragraph of Section 211, still it is quite clear that this offence was one committed in relation to a proceeding in court. It is obvious that there is considerable relation between the first report and the proceeding in court, for the latter is the result of the former. The report led to the police inquiry and the latter to the proceeding in court. The offence if it be one under Section 211 committed in respect to Sher Bahadur Singh was committed in relation to the proceeding in court, and at least the sanction of the court would be necessary under Section 195(1)(b). The argument that there was a separate complaint made to the police against each of the persons named in the report is the mere splitting of a hair as well as of a report. There was one report which led to a proceeding in court.

8. Whichever view we take of the law, it is clear in the circumstances of this case that the Magistrate had no power to take cognizance of the complaint made by reason of the absence of sanction.

9. We allow the application and quash the proceedings as the Magistrates action is illegal.

