

ALLAHABAD HIGH COURT

Emperor

Vs

Prag Datt Tiwari

(Dalal, J.)

24.07.1928

JUDGMENT

Dalal, J.

1. The Court had the advantage of listening to very helpful arguments from the Assistant Government Advocate and from Mr. Hamid Hasan.

2. One Prag Datt complained to the police that certain persons committed an offence. This was done on the 9th October 1927. Subsequently he lodged a complaint in the Court of a Magistrate on the same allegations on 17th October, and the complaint was dismissed after inquiry, on 2nd November 1927. A revision application to the Court of the Magistrate was dismissed in December of that year. Subsequently the Superintendent of Police of Cawnpore sent a written complaint to the District Magistrate for the prosecution of Prag Datt on a charge under Section 211, I.P.C., and the trial is being held by a Deputy Magistrate Mr. Mathur. On 23rd February last on objection being raised by Prag Datt as to the Magistrate's jurisdiction, the Magistrate gave reasons affirming his jurisdiction and directing the trial to proceed. A revision application from that order was dismissed by the learned Sessions Judge of Cawnpore.

3. I do not agree with the summary view taken by the Judge that so long as there is a sanction by any authority it will be sufficient to satisfy the requirements of Section 195, Criminal P.C. I have examined the case-law on the subject, and there appears to be conflict of authority between this Court and the Calcutta High Court, In a case like the present two Divisional Benches of the Calcutta High Court have held that the provisions of Section 195 (1)(b) would apply, and that there could be no prosecution without the sanction of the Court where the complaint was subsequently made in Court. In the present case it will be noticed that no such sanction was obtained. The judgment of the Bench in *Brown v. Ananda Lal Mullick* [1917] 44 Cal. 650 was delivered by the learned Chief Justice who has referred to a similar opinion given by another Bench of two Judges at about the same time The learned Chief Justice has commented on various rulings. His personal reason for holding the view that he did is given in the following

words: To hold otherwise, might lead to unreasonable results, e.g. assume a case where the information to the police is followed up by a complaint of a similar nature and to the same effect in Court, which after investigation by a Magistrate is discharged: the persons who had been accused then applies to the Court for sanction to prosecute the person who laid the complaint for making a false charge in Court, the Court refuses such sanction. According to Mr. Gregory's argument, the person who had been accused can then proceed without any sanction against the prosecutor alleging that he made a false charge to the police in the thana relying on the same allegations and the same facts, which the Magistrate has already investigated and as to which he had refused his sanction. Such a construction would be most unreasonable and, in my judgment, is not warranted by the language of the statute.

4. It may be pointed out with all respect that in such a case, at all events, a prosecution under Section 182 would be possible, and if such conflict between the Court and the police is permitted there is no reason why further conflict should not be permitted as to prosecution under Section 211. A Bench of this Court held definitely in *Emperor v. Kashi Ram*¹ that an offence under Section 211 was complete when the charge was made, that is, when a particular person was charged before the police. The mere fact that subsequent proceedings in Court are taken either against the person originally charged or against somebody else cannot affect what was done when the original charge was made, if it was a charge. In that case reference was made to a Bench of two Judges by Boys, J. That learned Judge disagreed with the view that a false report or a false charge made outside Court, that is an offence under Section 211, I.P.C. committed outside the Court, must be held to have been committed in relation to a proceeding in a Court if subsequently the case came into Court. He found it quite impossible to hold that an offence is committed in relation to a proceeding when in fact there has been no proceeding and to hold it to be in relation to the proceeding in a Court retrospectively because subsequently some proceedings did go into Court. My attention was drawn to a subsequent single Judge case of this Court, *Gheslawan Singh v. Emperor*² The facts of that case are different. The learned Judge himself pointed out that the case before him was distinguishable from the case of *Emperor v. Kashi Ram*³ because in the case before him the false charge was made in Court prior to any mention of such a charge to the Sub-Inspector. In my opinion, the offence, if any committed by Prag Datt, was complete before he went to Court with his complaint, and, therefore, it could not be said that the offence was committed in, or in relation to, any proceeding in any Court. Sanction of the Court under Section 195 (b), Criminal P.C. was, therefore, not necessary.

5. The next question is whether the Magistrate had the power to take cognizance under Section 190 on a report by a police officer. The Superintendent of Police who complained did not take action under Section 195 (1). The police officer can make a report in writing of facts relating to a non-cognizable offence also, and on such report the Magistrate can take cognizance of the offence. Under Section 190 (b) cognizance may be taken of an offence upon a report in writing of such facts made by any police officer. In the case of the Public *Prosecutor v. Ratnavelu Chetty*⁴ it was held by a Pull Bench that by virtue of Sections 190 (1)(b) and 200 (a-a), Criminal

P. C, Magistrates mentioned in Section 190 are entitled to take cognizance of even non-cognizable offences upon a report made in writing by a police officer without examining the officer upon oath.

6. Mr. Mathur or his successor has, therefore, jurisdiction to continue the proceedings against Prag Dat. I dismiss this application for revision.

Cases Referred.

1A.I.R. 1924 All. 779

2A.I.R. 1926 All. 613

3A.I.R. 1924 All. 779

4A.I.R. 1926 Mad. 865