

CALCUTTA HIGH COURT

Queen-Empress

Vs

Sham Lall

(W Comer Petheram, C.J. Wilson and Tottenham, JJ. Norris and Ghose, JJ.)

22.06.1887

JUDGMENT

W. Comer Petheram, C.J.

1. After stating the facts, continued: Upon the above facts three questions arise: First.--Were the supplications made by Sham Lall to the Magistrate on the 24th or 25th of March and the 1st of April "complaints" within the meaning of Section 191, Criminal Procedure Code, into which the Magistrate was bound to enquire ?;

Second.--Had the Magistrate, upon the report of the police, dated 22nd March, 1887, jurisdiction to make the order of March 24th, 1887 ? and Third.--If he had jurisdiction to make it, did he exercise a sound judicial discretion in doing so?

2. I am clearly of opinion that the first question must be answered in the affirmative.

3. Sham Lall, on the days in question, appeared before the Magistrate, stated that the offence had been committed, and requested that it might be investigated by calling and examining his witnesses. This, it seems to me, was the only complaint he could make, and, having made it, he was entitled, as a matter of common justice, to have it enquired into by the Magistrate, and that gentleman could not avoid the responsibility of making the enquiry himself merely by accepting the conclusion of the police on the subject.

4. The second question is more difficult; but after a careful consideration of the sections of the Code, and of the cases on the subject, I have come to the conclusion that it also must be answered in the affirmative.

5. The facts alleged, if they are true, might constitute an offence under Section 211, and a Magistrate may take cognisance of such an offence if it is properly brought before him; and it seems to me that, where a state of facts is brought to his notice by a police report, which affords ground for supposing that the offence has been committed, he has jurisdiction under Sections 191

and 192 to enquire into or try the charge himself, or to send it for enquiry or trial to one of his subordinates.

6. My answer then to the second question is in the affirmative.

7. The third question must, in my opinion, be answered in the negative. As before explained, I think that, under the circumstances, the Magistrate would have the jurisdiction. But, as a matter of sound judicial discretion, I also think that in all cases in which there is a suspicion--for it can be called nothing but a suspicion--arising from circumstances which have come under the Magistrate's notice on the perusal of the report of the investigation into another charge, that some offence, of which no one has complained, has been committed, the Magistrate ought not to take cognizance of such offence under Section 191, and direct that the persons suspected be tried, until some person aggrieved has complained, or until he has before him a police report on the subject, based on an investigation directed to the offence to be tried, and in cases of alleged false charges, until it is clear that the original charge has been either heard and dismissed or abandoned; and I should add that, in order to show conclusively that such a charge has been abandoned, I think that before the order to prosecute for the false charge is made, the person who made the original charge should be offered an opportunity of supporting it or abandoning it.

8. In the present case, in addition to these reasons which apply to all such cases, I think that the order of the Magistrate must be set aside because the suspicion is not justified by the police report on which it is founded.

9. The Magistrate's order will accordingly be set aside.

Norris, J.

10. This case comes before us on a reference under Section 438, Criminal Procedure Code, from the Sessions Judge of Bhagulpur.

11. The facts are as follows : On the 15th March, 1887, one Sham Lall gave information to the police that on the previous day, at about 4 A.M., three men, named Muni Lal, Ata Roy and Luchmun Roy, had stolen growing corn of the value of Rs. 100 from his field.

12. In his first complaint Sham Lall named four witnesses; when the police came to make enquiry into the alleged theft on the spot he stated that three of his witnesses had gone over to the side of the accused, and he named six fresh witnesses.

13. The police examined the one witness, out of the four first named, who had not gone over to the accused, and five out of the six subsequently named. One witness said : "On Monday, at 4 A.M., I went to the field and saw that the accused had been causing the crops of my master's

field to be reaped through his labourers and coolies; upon this I went to Monghyr and gave information to my master; my master came and lodged the complaint." Another witness said : "On Tuesday I saw the accused reaping crops on the field of the complainant." The remaining witnesses deposed, from hear say," that in this year the complainant grew barley on the field in dispute and that the said field was the jote of Muni Lal, one of the accused." Muni Lal, in answer to the charge, said: "This field has continued in my jote since five or seven years; in this year I also made cultivation, and reaped and brought the rabi crops on Monday last; the complainant falsely alleges that in this year he made cultivation and grew crops, the reason being that I hold shikmi nukdi jote under Gokhal Kumhar, who is brother-in-law of Jhumuk Ram Kumhar, auction-purchaser, who held nukdi jote under the said Jhumuk Ram Kumhar; since two years the rent of this field has fallen due by me ; Jhumuk Ram Kumhar, the zemindar, has on the part of the real jotedar, Gokhal Kumhar caused a suit to be instituted against me for arrears of rent; owing to the annoyance caused by the said non-payment of rent Jhumuk Kumhar the zemindar, has, by the advice of Gokhal Kumhar, the real jotedar, caused a pottah to be executed and registered in favour of Sham Lal Kumhar " (the complainant), " his relation, and a person of the same caste, in respect of jote land without my knowledge, and laid this plan to eject me from the field, and now caused this false complaint to be brought by the complainant against me for taking the crops grown by me; but in this year I cultivated and grew crops on my entire field as before and carried away the crops of the same."

14. Ata Roy "pleaded his absence of concern in this field and corroborated, according to Muni Lal's answer, that the field in suit was the jote of Muni Lal, accused," Lutchmun Roy does not appear to have been examined. Twelve witnesses were examined by the police on the part of Muni Lal, one of them being one of the witnesses named by the complainant in his first complaint and who was alleged by him to have gone over to the accused. The statement of Muni Lal and the evidence of his witnesses satisfied the police " that the complainant had not cultivated the field, that the complaint was altogether false, that the plan had been laid on the part of Jhumuk Ram Kumhar, zemindar, for dispossessing the accused of his field and for taking away this year's crops of his field, that in reality the land was cultivated and sown with crops by Muni Lal, accused"; they, therefore, forwarded a report in Form C (false case), stating in column 7 under the heading "particulars of the enquiry with names of any persons accused or suspected but not arrested," "on enquiry the charge against Muni Lal, Ata Roy, and Luchmun Roy, accused, is not proved, for in this case the question of title is involved," and at the end of column 9, under the heading "course adopted by the police and reasons of failure," they said "the case is found false owing to question of title being involved ; consequently no charge of bringing false complaint can be made." The report was sent to the Deputy Magistrate, who forwarded it to the District Magistrate, Mr. Mosley, who on 24th March made an order " that the complainant be

prosecuted for bringing a false complaint, the occurrence being false." On the 24th or 25th of March, Sham Lall applied to the District Magistrate "to have his witnesses summoned and the case tried ;" this application was rejected on 31st March. On the 1st April Sham Lall again applied to have his complaint tried ; this application was rejected on 5th April; and on 7th April the charge against Sham Lall of bringing a false charge was made over by the District Magistrate to a Deputy Magistrate for enquiry or trial.

15. Sham Lall then petitioned the Sessions Judge "to revoke the sanction given by the District Magistrate."

16. The Sessions Judge as he correctly points out in his letter of reference, cannot interfere. The District Magistrate's order for the prosecution of Sham Lall is not a "sanction" within the meaning of Section 195, Code of Criminal Procedure, for the alleged offence of bringing a false charge was not " committed in, or in relation to, any proceeding in any Court," but before the police, and no sanction to prosecute was necessary ; thus there is no " sanction given by an authority subordinate" to the Sessions Judge which he can revoke. Neither can the Sessions Judge, under Section 437, Code of Criminal Procedure, "himself make or direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make further enquiry into " Sham Lall's complaint against Muni Lal and the others, for it has not been dismissed under Section 203, Code of Criminal Procedure, nor have the accused persons been discharged.

17. Under these circumstances the Sessions Judge has referred the case to us with a recommendation that the District Magistrate's order of 24th March should be set aside, and that he be directed to hear Sham Lall's complaint.

18. I am of opinion that we ought to act in accordance with the Sessions Judge's recommendation. The District Magistrate in his letter of explanation to the Session Judge says: "There are contradictory rulings on this subject of prosecution under Sections 182 and 211 of the Indian Penal Code, but what runs through all that I have been able to consult is that, when a man has made a complaint before a Magistrate, he must have proper opportunities to prove his case before he can be prosecuted under the above sections; but there was no complaint of Sham Lall's before a Magistrate in this case, for a petition to be allowed to call his original witnesses, put in after a prosecution was instituted, was not a complaint."

19. I think that the view taken by the District Magistrate of Sham Lall's application or petition is erroneous. I am clearly of opinion that it was a " complaint" within the meaning of Section 191, Code of Criminal Procedure. That section authorizes a Magistrate to " take cognizance of any offence upon receiving a complaint of facts which constitute such offence." This "complaint" may be by word of mouth or in writing; no prescribed form of words is necessary ; all that is

required is that facts, which prima facie constitute an offence, should be brought to the notice of the Magistrate by the complainant. It is clear that the question of the time when an application or petition is made to a Magistrate, cannot be a circumstance to be taken into consideration in arriving at a conclusion as to whether it is a "complaint" or not.

20. The precise form of Sham Lall's application or petition is not before us. The District Magistrate speaks of it as a "petition to be allowed to call his original witnesses." The Sessions Judge says Sham Lall "asked to have his witnesses summoned and the case tried." Even if the petition was, as the District Magistrate describes it, a bare application to be allowed to call the original witnesses, it must, of course, be read in connection with the police report which was before the Magistrate and which he says he had "carefully considered "; and so read, the petition could mean nothing less than a reiteration by Sham Lall of his charge to the police and a request that such; charge should be enquired into. If, as the Sessions Judge says, Sham Lall "asked to have his witnesses summoned and the case tried," it is difficult to conceive of any element wanting to constitute "a complaint."

21. Sham Lall's petition being, in my opinion, a complaint, it was the duty of the Magistrate to proceed with it according to law; and it was none the less his duty so to proceed, because the charge in respect of which the complaint was made had been returned by the police as false.

22. I am, therefore, of opinion that Sham Lall's complaint should be enquired into and dealt with according to law.

23. In determining whether the District Magistrate's order for the prosecution of Sham Lall for an offence under Section 211, Indian Penal Code, should be set aside or not, two questions arise; First, had the Magistrate under the circumstances of the case and upon the materials before him jurisdiction to make the order? Second, if he had jurisdiction, has he exercised it with judicial discretion ?

24. I am of opinion that the first question should be answered in the affirmative. Section 191 of the Code of Criminal Procedure authorizes a Magistrate "to take cognizance of any offence (a) upon receiving a complaint of facts which constitute such an offence ; (b) upon a police report of such fact; (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."

25. It is clear that the Magistrate in this case had such materials before him that upon a consideration of them he might "suspect" the offence had been committed.

26. Mr. Ghose in arguing for the petitioner contended that, whereas the conclusions arrived at by the police and embodied in their report would, if true, point to the commission of an offence by

Sham Lall under Sections 182 and 499, Indian Penal Code, equally with one under Section 211, Indian Penal Code, and that whereas offences under Sections 182 and 499, Indian Penal Code, were, if judged by the punishment which might be inflicted in respect of them, much less serious than an offence under Section 211, Indian Penal Code; and that whereas an offence under Section 182, Indian Penal Code, could only be taken cognizance of "with the previous sanction or on the complaint of the public servant concerned, or of some public servant to whom he is subordinate"; and that whereas an offence under Section 499, Indian Penal Code, could only be taken cognizance of "upon a complaint made by some person aggrieved by such offence," it could not have been the intention of the Legislature to allow a Magistrate to take cognizance of an offence of making a false charge under Section 211, Indian Penal Code, except upon the fulfillment of one or other of the conditions precedent to the authority of the Magistrate to take cognizance of offences under Sections 182 and 499, Indian Penal Code. I am unable to give effect to this argument.

27. The Legislature has deliberately under Section 195, Clause, Code of Criminal Procedure, limited the protection of a preliminary sanction in respect of offences under Section 211, Indian Penal Code, to cases where "such offence is committed in, or in relation to, any proceeding in any Court." It is for the Legislature to decide whether the same protection should be given to persons charged under Section 211, Indian Penal Code, with making a false charge to the police, as is given to persons charged under that section, " when the offence is committed in, or in relation to, any proceeding in any Court," and to persons charged under Sections 182 and 499, Indian Penal Code.

28. Mr. Ghose further contended that when, as in this case, the complainant has had no opportunity of establishing the truth of his original charge, the Magistrate had no jurisdiction to take cognizance of an alleged offence under Section 211, Indian Penal Code, until the complainant has had such opportunity afforded him. I do not think this is so. I can find no provision in the Code of Criminal Procedure thus clogging the Magistrate's jurisdiction, and the reported cases do not support the argument.

29. The case mainly relied upon by Mr. Ghose was *Empress v. Karimdad*¹ where Garth, C.J., in giving judgment, is reported to have said : "Whatever opinion may have been formed by the Magistrate upon the police report as to the truth of Karimdad's complaint, when he appeared with his witnesses and asked to be allowed to prove his case, we think that the Magistrate could not, without hearing him and his witnesses, and deciding upon the truth or falsehood of his charge, proceed to put him upon his trial under Section 211 of the Penal Code." If the learned Judge by " could not " meant "was not authorized by law," I am unable to agree with him. But if he meant, as I think a perusal of the concluding paragraph of his judgment shows that he did mean, "could

not with due regard to judicial discretion," the case so far from being an authority in Mr. Ghose's favour is an authority against him.

30. I now proceed to consider whether in this particular case the Magistrate has exercised a judicial discretion in taking cognizance of the alleged offence under Section 211, Indian Penal Code, and directing a prosecution there for. I am of opinion that he has not and that his order must be set aside.

31. As already pointed out the District Magistrate admits " that, although there are contradictory rulings on the subject of prosecutions under Sections 182 and 211, Indian Penal Code, yet what runs through all he has been able to consult is that, when a man has made a complaint before a Magistrate, he must have proper opportunities of proving his case before he can be prosecuted under the above sections."

32. If for " can be prosecuted " we read "ought to be prosecuted," the District Magistrate's interpretation of the cases is quite right.

33. As therefore I have already held that Sham Lall's application or petition of the 24th March was a "complaint" within the meaning of Section 191, Code of Criminal Procedure, it is clear that upon his own view of the authorities the Magistrate's order must be set aside.

34. It is manifest, too, that the District Magistrate has misapprehended the nature of the police report in this case. He says, in his letter of explanation to the Sessions Judge, "the real complaint was in the police report, where the police complained against Sham Lall and asked for a prosecution, and after carefully considering that complaint, and moreover studying the evidence by which it was supported, I made the case over for trial." Now the police report was not " a complaint of facts constituting an offence " within Section 191, Code of Criminal Procedure, and so far from its " asking for a prosecution," it distinctly stated, it may be on quite insufficient grounds, " that no charge of bringing a false complaint could be laid owing to a question of title being involved."

35. I am also of opinion that the conclusions of the police as embodied in their report were of such a character as to reasonably warrant the Magistrate in "suspecting " that Sham Lall had committed an offence under Section 211, Indian Penal Code.

36. It is not in accordance with the ordinary practice in criminal cases that Magistrates should take cognizance of non-cognizable offences except upon the complaint of the aggrieved persons, though there may be exceptional cases in which they may exercise a judicial discretion in doing so. And there is nothing in the Code of Criminal Procedure to indicate that the Legislature intended charges under Section 211, Indian Penal Code, to stand on any different footing from

charges of any other non-cognizable offence.

37. I am also of opinion that a Magistrate should not take cognizance of an alleged offence under Section 211, Indian Penal Code, until the alleged: offender has had an opportunity of substantiating the original charge, and such original charge has been disposed of in due course of law.

38. There is no doubt that the decided cases show that a Magistrate may take cognizance of the offence of making a false charge when the original complaint has been abandoned, but he must do so on proper materials.

29. The necessary ingredients to constitute a false charge under Section 211, Indian Penal Code, are three. In the first place it must be made with intent to injure; in the second place it must be false; and in the third place it must be made without just or lawful ground; in other words it must be made maliciously.

40. Now it does not at all follow that because a person has charged' another to the police with, say, theft, and has not applied to a Magistrate to take cognizance of the charge after the police have found it false, and in that sense has abandoned it, that he thereby admits that the charge was made with intent to injure, or that it was made maliciously. He may have made the charge, as in this case, upon the information of a third person, and during the progress of the police investigation he may have satisfied himself that his informant was mistaken, and the charge, therefore, in the sense of being untrue, false. Or again, having made the charge on his own responsibility, he may be satisfied after the police investigation, that it is a case of mistaken identity, or that the person whom he has charged took the article, said to have been stolen, under a bona fide claim of right.

41. Therefore it by no means follows from the failure of a person to apply to a Magistrate to take cognizance of a charge which has been found by the police to be false that there need be grounds for preferring a charge against him under Section 211, Indian Penal Code, of making a false charge.

Wilson, J.

42. I concur in the judgments that have been delivered.

Tottenham, J.

43. I too concur generally in these judgments, but I am not quite satisfied that the Magistrate should be deterred from taking cognizance of offences against public justice except on the complaint of parties actually aggrieved by them.

Ghose, J.

44. I concur generally in the judgments that have been delivered by the Chief Justice and Mr. Justice Norris.

Cases Referred.

17 C.L.R. 467 : 6 C. 496