CALCUTTA HIGH COURT

Karim Buksh

Vs

The Queen-Empress

(W.C Petheram, C.J. Wilson and Tottenham, JJ. O'Kinealy and Macpherson, JJ.)

05.09.1888

JUDGMENT

Wilson, J.

1. Section 211, Indian Penal Code, enacts as follows: Whoever, with intent to cause injury to any person, institutes, or causes to be instituted, any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

2. The question before us is whether the latter part of the section applies to cases in which complaint has been made to the Police of an offence falling within the description given, and into which the Police are by law authorized to enquire.

3. According to the Code of Criminal Procedure now in force, there are two modes in which a person aggrieved may seek to put the criminal law in motion. He may make a charge, or in the language of the Code give information, to-the Police (section 154). If the information discloses a cognizable offence, the proper officer of Police may proceed to make an investigation; and if the result of that investigation is adverse to the accused, he is, in due course, brought by the Police before a Magistrate. All this forms the subject of Chapter XIV of the Procedure Code. If the information does not disclose a cognizable offence, the Police cannot take any step of their own authority. Secondly, a person aggrieved may lay a charge, or, as the Code calls it, a complaint, (section 191) before a Magistrate.

4. Whichever of these methods is adopted, the thing done by the accuser is the same, that which

is called in the one case giving information, in the other making a complaint. In each case the steps that follow are governed by the Criminal Procedure Code. In each the first step taken by the accuser is ordinarily also the last, for from that time the control of the investigation or enquiry passes out of his hands into those of the constituted authorities; subject to this, that if, after an information before the Police, the result of their investigation is adverse to the complainant, he may renew his complaint to the Magistrate. The procedure by information to the Police is by far the more common course of proceeding, especially where any grave offence is alleged. A system similar to the present in these matters was in force when the Penal Code was passed in 1860; it was embodied in the First Procedure Code of 1861, and has been continued ever since.

5. In that state of things, if the latter part of Section 211 had stood alone, there could probably have been no doubt that the words "if such criminal proceedings be instituted" applied no less to a case in which the criminal law is set in motion by information to the Police than to one in which it is set in motion by complaint to a Magistrate. But the doubt arises from the fact that the expressions "institutes criminal proceedings" and "falsely charges" occur in the first part of the section, and only the one expression such criminal proceedings be instituted in the latter. And hence the argument arises that the Legislature must have meant different things when it spoke of "instituting proceedings" and "making a charge," and that only what fell within the former phrase was within the latter part of the section.

6. I agree in this reasoning in one sense and not in another, I agree that we must take it that the Legislature did not regard the two phrases as coextensive in meaning, but considered that there were, or might be, cases to which the one would apply and not the other. But I do not think we are to suppose that the Legislature meant the phrases to be mutually exclusive in meaning, so that the instituting of criminal proceedings must be by something which is not a charge, and a charge must be something which is not the institution of criminal proceedings. This cannot, I think, be for two reasons. First, because there is no mode by which a private accuser can institute criminal proceedings except by making a charge; and if he does not do it by the charge, he never does it at all, to whatever length the proceedings may go. And secondly, because the last part of the section speaks of "proceedings instituted on a false charge."

7. It is not difficult to see various classes of cases which either do or probably may fall under one of the expressions used and not under the other, and which the Legislature may well have had in view when it used both. Thus proceedings to compel any one to give security, by reason of an anticipated breach of the peace under Section 107, or because he is concealing himself or has no ostensible means of subsistence under Section 109 of the Procedure Code are apparently criminal proceedings, but they do not necessarily involve a charge of any offence. On the other hand, a charge to the Police of a non-cognizable offence may very possibly be a charge within the meaning of the section, but could hardly be called the institution of criminal proceedings. So a charge made to the Judge of a Civil Court, or to public officers of other kinds, in order to obtain sanction to prosecute may well be a charge, but is not the institution of criminal proceedings.

8. For these reasons, I think that a man who sets the criminal law in motion by making a false charge to the Police of a cognizable offence, institutes criminal proceedings within the meaning of Section 211 of the Penal Code; and that if the offence fall within the description in the latter part of the section, he is liable to the punishment there provided.