

CALCUTTA HIGH COURT

Jogendra Nath Mookerjee

Vs

Emperor

(Rampini and Mookerjee , JJ.)

08.08.1905

JUDGMENT

Rampini and Mookerjee, JJ.

1. This is a rule to show why the order of the Subdivisional Magistrate of Rampore Hat directing the prosecution of the petitioner under Section 211 of the Indian Penal Code should not be set aside.
2. The facts are that the petitioner, on the 22nd May last, instituted proceedings at the thana against two persons for an offence under Section 436 of the Indian Penal Code, i.e., of mischief by fire.
3. The police investigated the case and reported it to be false.
4. The petitioner then, on the 29th May, presented a petition to the Subdivisional Magistrate impugning the correctness of the police report and praying that the persons accused by him might be brought to trial. The Magistrate directed this petition to be put up with the police report.
5. On the 30th May, the Magistrate directed that the petitioner should be called on to show cause why he should not be prosecuted under Section 211 of the Indian Penal Code for making a false complaint. He made over the inquiry to a Sub-Deputy Magistrate with second class powers.
6. The Sub-Deputy Magistrate examined the witnesses and reported that the case was false.
7. The Subdivisional Magistrate then heard the petitioner's pleader and, on the following day, recorded an order to the following effect: "I agree with Sub-Deputy Magistrate that the case has been got up out of enmity. Complainant was careful not to say that he saw the accused, but it is clear that he is the author of the conspiracy. Enter intentionally false under Section 436 of the Indian Penal Code. The prosecution of Jogendra Natli Mookerjee under Section 211 is ordered."

11. On behalf of the petitioner it is contended that this order is bad, because the applicant's petition of the 29th May is a complaint, and has not been disposed of in accordance with the provisions of Section 203 of the Criminal Procedure Code. In support of this contention the following cases have been cited: In the matter of *Chukradar Potti¹, Queen-Empress v. Sham Lall² Mahadeo Singh v. Queen-Empress³ Gunamony Sapui v. Queen-Empress⁴ Budh Nath Mahato v. Empress⁷ Be Sahiram Agaricalla⁵ and an unreported case, Dusaralli Singh v. Emperor⁶* dated 14th August, 1903, Cr. Rev. No. 2773, decided by Banerjee and Handley, JJ. on the 14th August, 1903.

12. On the other hand, the Magistrate, in showing cause, urges that the applicant's petition of the 29th May was not a complaint under Section 203 of the Code, but was merely a petition presented to him with reference to the police inquiry.

13. The petition in question does not appear to be such a petition as is according to the practice in the mofussil regarded as a complaint. That expression, according to the practice in the mofussil, is considered to be applicable to the application which a petitioner, who has not complained to the police, makes to the Magistrate informing him of the commission of an offence by certain persons and naming the witnesses he wishes examined in support of his complaint.

14. But the definition of complaint contained in Section 4 of the Criminal Procedure Code is a very wide one, and may be held to cover a petition such as was presented by the petitioner to the Subdivisional Magistrate on the 29th May last/ Further, it has undoubtedly been laid down in the cases cited on behalf of the petitioner that a petition presented to a Magistrate in the course of a police inquiry is a complaint, which must be dealt with under Section 203 of the Criminal Procedure Code before a prosecution under Section 211 of the Indian Penal Code can be instituted against the person, who presents it.

15. The rulings above cited, and others of a similar character, would seem to have engrafted on the Statute law a procedure in cases under Section 211 of the Indian Penal Code, which is not to be found there. They apparently lay down the rule that, when a person institutes before the police criminal proceedings, which on inquiry are found to have no justification, before he can be prosecuted for an offence under Section 211 of the Indian Penal Code, he must first have an opportunity afforded him of proving his case against the accused, and, if he chooses to impugn the correctness of the police enquiry by petition, he is entitled to have the persons complained against tried on the charge the police and the Magistrate consider false, or else his statement must be recorded by the Magistrate on oath and his complaint dismissed under Section 203 of the Criminal Procedure Code.

16. We feel grave doubts as to whether there is any justification for such a procedure to be found in either of the Codes, It is argued that it is only fair to a person, who has made a complaint

against another, which is reported by the police to be false, to have an opportunity of proving his case against the persons he has charged with an offence. But he may prove this when he is prosecuted for an offence under Section 211 just as well as, if not better, than when he is in the position of a prosecutor, for the onus of proof is always on the prosecution. Moreover, it may be pointed out that it is unfair to the persons, who have been falsely and maliciously charged with an offence nobody believes they committed, to be put to the expense and harassment of a criminal trial merely for the purpose of giving the complainant a chance of proving his case against them--presumably by false evidence. Such a procedure is unknown to the Statute law of this country or to the Statute law of England, Scotland or Ireland. It is not the law in Madras *Ramasami v. Queen-Empress*⁸ or in Bombay *Imperatrix v. Jijibhai Govind*⁹ or in the United Provinces of Agra and Oudh *Queen-Empress v. Raghu Tearai*¹⁰ We would feel inclined to refer the question of the propriety of this procedure for the consideration of a Full Bench, if it were not that the case of *Queen-Empress v. Sham Lall*¹¹ is the decision of a Full Bench, which, according to the Rules of this Court, is binding upon us.

17. In these circumstances we must make this Rule absolute, and direct that the order of the Subdivisional Magistrate of Rampore Hat of the 7th July last, directing the prosecution of the petitioner under Section 211 of the Indian Penal Code, be set aside.

Cases Referred.

- 1(1883) 8 C.L.R. 289
- 2(1887) I.L.R. 14 Calc. 707
- 3(1900) I.L.R. 27 Calc. 921
- 4(1899) 3 C.W.N. 758
- 5(1900) 5 C.W.N. 254
- 6Unrep. Cr. Rev. No. 2773
- 7(1809) 4 C.W.N. 305
- 8(1884) I.L.R. 7 Mad. 292
- 9(1896) I.L.R. 22 Bom. 596
- 10(1893) I.L.R. 15 All. 336
- 11(1887) I.L.R. 14 Calc. 707