

# CALCUTTA HIGH COURT

F.A. Brown

Vs

Ananda Lal Mullick

(Lancelot Sanderson, C.J. Walmsley, J.)

03.08.1916

## JUDGMENT

### **Lancelot Sanderson, C.J.**

1. In this case the petitioner, Mr. Brown, on the 25th of February 1915, laid an information at the Chitpore Police Station, charging one A.L. Mullick, who was the Managing Director of the company in which Mr. Brown was a share holder, with the theft of certain steel joists and other articles belonging to the company. The Engineer of the company was charged with aiding and abetting the alleged offence, The Sub-Inspector after investigating the matter refused to take action upon the information.
2. Thereupon, the petitioner, on the 1st of March 1915, lodged a complaint before the Sub-Divisional Officer of Sealdah, and the charge which was alleged in that complaint was under Section 380 of the Indian Penal Code against A.L. Mullick, namely, theft, and against the Engineer, for aiding and abetting that offence.
3. This was sent by the Sub-Divisional Officer to the Honorary Magistrate at Sealdah for disposal.
4. Before the Honorary Magistrate the petitioner was examined on oath, and then process was issued by the Magistrate against A. L. Mullick, charging him with an offence under Section 380 and the Engineer with an offence under Section 380 read with Section 109 of the Indian Penal Code.
5. It should be noted that this was a charge to the same effect as that made by the petitioner to the Police.
6. Then the Honorary Magistrate retired, and the result was that the Sub-Divisional Magistrate put the case on his own file.
7. On the 10th of March 1915, the Engineer laid a complaint charging the petitioner, Mr. Brown, under Section 211 of the Indian Penal Code, that is to say, with making a false charge against him knowing that there was no just or lawful ground for such charge, and with intent to cause

injury to the complainant. With regard to that matter on the 23rd of March 1915 the Sub-Divisional Officer, according to the note on the order-sheet, said: "I have seen the Police papers. They do not justify any step being taken in this case. There is a cross case in the file of Rai B.N. Bose Bahadur. Put up after the disposal of that case." A similar application was made by A.L. Mullick and a similar order, as I understand, was passed.

8. Then the case, which was instituted by Mr. Brown, the petitioner, was enquired into, Fifteen witnesses were examined for the prosecution, and after numerous adjournments, on the 23rd of December 1915, the Sub Divisional Officer discharged the accused A.L. Mullick and the Engineer basing his judgment upon this. He said: "The question is, can a case like this lie against the Managing Director at the instance of only one share-holder who holds only 600 shares out of 2,500 shares A member of a company cannot maintain an action in which he sues on behalf of himself and all other members of the company in respect of wrongs committed against or frauds upon the company as the wrongful or fraudulent acts can be confirmed by the majority of the Corporation," "In the present case also nothing has been done to ascertain the views of the other share-holders and taking it for granted that the prosecution story is true, it is not known what view the majority of the shareholders in a meeting of the company will take in the matter, and, as such, no case can lie." The correctness of this judgment has not been argued and is not under discussion, but it is to be noted that the Sub-Divisional Officer did not decide that the prosecution had been brought without bona fides.

9. On the 11th of March 1916, two cases were brought, the first by A.L. Mullick and the second by the Engineer against the petitioner, Mr. Brown, and they were made over to the Honorary Magistrate. And after several adjournments and orders with reference to the two cases, a Rule was obtained in this Court on the 29th of June 1916 to show cause why the proceedings against the petitioner, Brown which were pending at the instance of A. L. Mullick, should not be quashed.

10. The charge made by A.L. Mullick in his complaint was that the petitioner Mr. Brown had brought a false charge of theft against him at the Chitpore Thana, knowing that he had no justification for it, and that such charge was brought maliciously to do harm to A.L. Mullick, and this charge was based upon Section 211 of the Indian Penal Code.

11. The main point upon which the Rule was obtained was that the offence charged was in relation to a proceeding in the Court and that no sanction of that court had been obtained; and consequently under Section 195(b) of the Criminal Procedure Code, that Court could not take cognizance of the alleged offence.

12. Learned Counsel now for A.L. Mullick showed cause and argued that inasmuch as the alleged false charge which was complained of was made in the Chitpore Thana and put in Court, no sanction was necessary.

13. The learned Vakil for the petitioner replied that when an information is followed by a complaint to the Court, sanction is necessary under Section 195.

14. Apart from any authorities, I should have no doubt as to the construction of the Statute and that under the circumstances of this case, where the information to the Police was followed by a

complaint to the Court based on the same allegations and on the same charge as that contained in the information to the Police, and when the complaint has been investigated by the Court, sanction or a complaint of the Court itself under Section 195(b) of the Criminal Procedure Code would be necessary, before a Court could take cognizance of an offence punishable under Section 211 of the Indian Penal Code alleged to have been committed by making a false charge to the Police, on the ground that it was an offence committed in relation to a proceeding in Court. If A.L. Mullick had based his charge on Section 182 of the Indian Penal Code, which he might have done, the sanction of the Police Officer to whom the alleged false charge was made, or the sanction of some public servant to whom he was subordinate, would have been necessary. If he had based his case on the allegations made by the petitioner in the Court, clearly the sanction of the Court would be necessary before he could take proceedings against the petitioner under Section 211. But it is alleged that A.L. Mullick can base his charge upon Section 211, confining it to the allegations of the petitioner in the Police Office and proceed without the Court's sanction, although there was no material difference between the information to the Police and the allegations presented in the Court. I do not think this was the intention of the Legislature. 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 person 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.

16. With regard to the cases which were quoted to us, the first was *Putiram Ruidas v. Mahomed Kasem*<sup>1</sup> It is to be noted that in that case the Rule was granted in the following terms: Let a Rule issue to the Magistrate to show cause why the sanction for prosecution granted by the Honorary Magistrate should not be revoked upon the ground that such sanction could only have been given by the Court to which the original complaint had been made." The Rule was discharged upon that ground. But the Court went on to deal with the further question and laid it down in these terms: It appears, however, that sanction has really been granted by the Honorary Magistrate to prosecute the petitioner for bringing a false charge against Mohammad Kassem and others before the Balliaghatta Police, but that was not an offence committed in or in relation to any proceeding in his Court, and, therefore, it seems to us that no sanction from the Honorary Magistrate was necessary, and upon that ground we think we ought to set it aside." In my judgment, that opinion was an obiter dictum it was not necessary for the decision. The learned Judges had already discharged the Rule upon another ground: and having regard to what appears at the end of the judgment I do not quite follow the reasoning of the learned Judges, because they say as follows: Observing at the same time that we see no reason why the prosecution should not proceed without any sanction whatever, the offence having been committed in the laying of a criminal charge before the Police, that charge having now been enquired into judicially, and the enquiring Magistrate being of opinion that it is a fit case for the prosecution of the petitioner." If they thought that no sanction of the Magistrate was necessary, then I fail to understand why it was necessary for them to draw attention to the fact that the enquiring Magistrate was of opinion that it was a fit case for the prosecution of the petitioner. I do not myself feel bound by the decision of

that case, as I have said the opinion of the learned Judges was obiter dictum.

17. The other case cited by Mr. Gregory was the case of *Jadunandan Singh v. Emperor*<sup>2</sup> There the question was as to the proper construction of Section 476 of the Criminal Procedure Code, as to which different considerations arise, having regard to the language which is used in Section 476, different to that of the section which is now under consideration. The ratio decedent is made quite clear by the learned Judges at page 254 Page of 37 C.-Ed, where they say: Let us now turn to Section 476, That section. we quote only so much of it as applies, to the present case provides, that, when any Criminal Court is of opinion that there is ground for enquiring into any offence referred to in Section 195 and committed before it, or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary enquiry that may be necessary, may send the case for enquiry or trial to the nearest Magistrate of the first class." The construction of the section, which is now being considered only, came into consideration incidentally in that case; and, in my judgment, the point which is now under consideration does not seem to have been present to the learned Judges mind, and I do not think, having regard to the terms of the judgment, that they ever intended that decision to cover the point in the present case.

18. A case was cited by the learned Vakil for the petitioner, viz. *Hardwar Pal v. Emperor*<sup>3</sup> it is not necessary for me to express any opinion as to whether that judgment is correct, because the judgment in that case goes a great deal further than the judgment that we are giving in this case, inasmuch as the facts are quite different from the facts in this case. They were to this effect that the person who was alleging that a false charge was made against him in the Police Station was not before the Magistrate, although others who were implicated in the same charge were. The head-note is this: H made a report against several persons, including one 8 at a Police Station, charging them with rioting and voluntarily causing hurt. The Police made inquiry and sent up several persons for trial, but not Section Some of these were convicted by the Magistrate, but acquitted by the Sessions Judge. Thereupon S made a complaint to the Magistrate charging II with having made a false report in respect of himself to the Police. The Magistrate took cognizance of the complaints Held, that the Magistrate had no power to take cognizance of the complaint by reason of the absence of sanction." As I have said before, it is not necessary for my judgment to express any opinion as to whether we are prepared to go so far as the decision in the case in the Allahabad series, because the facts in the present case are different from the facts in that case, and, in my opinion, the present question is much easier for decision than the one presented in the other case. There is one passage in the judgment to which I wish to refer, which I think helps this case, and it is this (at page 527): "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)." As I have said before, I guard myself by saying that I am not now expressing an opinion whether this case is right or wrong. If it is right, then the reasoning applies a fortiori to this case which is now before us, and confirms the opinion at which I have already arrived upon the construction of the words of the Statute.

19. I am confirmed in the judgment which I have arrived at by a decision of Mr. Justice Mookerjee and Mr. Justice Sheepshanks in the case of *Tayabullah v. Emperor*<sup>4</sup> and it must be

remembered that Mr. Justice Mookerjee was a party to the decision in the case reported as *Jadu XandanSingh v. Empsror* <sup>5</sup>The head-note of that case is this: No sanction to prosecute is necessary under Section 195(1)(b) of the Code of Criminal Procedure, when a false charge has been made to the Police and has not been followed by a judicial investigation thereof by a Court. Where, therefore, the complainant to the Police never applied to the Magistrate for investigation, nor did he impugn the correctness of the Police report as to the falsity of the complaint, nor did he pray that the person accused by him might be brought to trial, nor was he examined on oath by the Magistrate: Held, that the order for sanction to prosecute him was bad, if it was deemed to have been granted under Section 195 of the Code, inasmuch as there was no complaint within the meaning of Section 4(h) of the Code, and the offence could not be said to have been committed in a proceeding in a Court." The passage in the judgment to which I wish to refer is this (page 135): No sanction was required in this case under Section 195(1)(6). A sanction is requisite in respect of an offence under Section 211, Indian Penal Code, only when such offence has been committed in or in relation to any proceeding in any Court; no sanction is necessary when a false charge has been made to the Police and has not been followed by a judicial investigation thereof by a Court. "The position is different where, upon the Police report as to the falsity of the complaint, the complainant insists upon a judicial investigation; if he does so, he is deemed to have preferred a complaint to the Magistrate; if the Magistrate finds his case to be false, a sanction would be requisite under Section 195(1)(b), as the offence may be said to have been committed in a proceeding in a Court." It is satisfactory to us that we had arrived at the above-mentioned decision before we knew of the conclusion to which Mr. Justice Mookerjee and Mr. Justice Sheepshanks came the other day, and to find that their judgment is in conformity with ours.

20. For these reasons I think that the Rule must be made absolute and the proceedings against the petitioner must be quashed.

**Walmslky, J.**

21. I agree in the judgment that has been delivered by the learned Chief Justice.

Cases Referred.

13 C.W.N. 33

24 Ind. Cas. 710 : 37 C. 250 : 10 C.L.J. 564 : 14 C.W.N. 330 : 1 Cr. L.J. 37

316 Ind. Cas. 510 : 34 A. 522 : 10 A.L.J. 61 : 13 Cr. L.J. 702

436 Ind. Cas. 845 : 24 C.L.J. 134 : 20 C.W.N. 1265 : 18 Cr. L.J. 13

54 Ind. Cas. 710 : 37 C. 250 : 10 C.L.J. 564 : 14 C.W.N. 330 : 1 Cr. L.J. 37