KERALA HIGH COURT

Albert

Vs

State of Kerala

Criminal Revn. Petn. No. 408 of 1964 and Criminal Ref. No. 50 of 1964

(P.T. Raman Nayar, Anna Chandy and Govinda Menon, JJ)

26.07.1965

JUDGMENT

Raman Nayar, J.

1. The question we have in answer for deciding this case is, in the words of the referring order, "Does selling the criminal law in motion by making a charge to the police of a cognizable offence against a person amount to the institution of criminal proceedings against that person within the meaning of Section 211 of the Indian Penal Code ?". It is a question with regard to which there seems to foe considerable conflict of authority.

2. The two accused persons in this case, it is alleged, gave information to the police charging four named persons with the offence of robbery punishable under Section 394 of the Indian Penal Code. The police investigated the charge and referred it as false. The accused did not take the matter any farther by instituting a complaint in court, and they were prosecuted for an offence under the second part of Section 211 of the Indian Penal Code. A preliminary inquiry was held under Chapter XVIII of the Criminal Procedure Code and the accused were commuted to Sessions on the finding that there was a prima facie case against them for an offence falling under the third paragraph of the entry in respect of Section 211 of the Indian Penal Code in Schedule II of the Criminal Procedure Code and therefore an offence exclusively friable by a Court of Sessions When the case came on for trial before the Assistant Sessions Judge, to whom it had been made over by the Sessions Judge, a preliminary objection was taken on behalf of the accused that the offence alleged against them fell only within the first part and not within the second part of Section 211 of the Indian Penal Code. Therefore, the case was triable only by a magistrate of the first class and not by the Court of Session. The learned Assistant Sessions Judge took the view that there was some substance in this contention, but he nevertheless decided to proceed with the trial because he had neither the power to quash the commitment nor the power to make a report to the High Court under Section 438 of the Criminal Procedure Code. However, he wrote a very long order in the matter and sent copy of it to the Sessions Judge who has made a report which has been numbered Criminal Reference No. 50 of 1964. The 1st accused in the case has come up in revision - his petition is Criminal Revision Petition No. 408 of 1964 - and has prayed that the order of commitment be quashed.

3. We may at the outset observe that both the reference and the revision petition appear to proceed on the mistaken assumption that, because an offence falling under the first part of Section 211 of the Indian Penal Code is shown in the second schedule of the Criminal Procedure Code as triable by a Presidency Magistrate or Magistrate of the first class with no mention made of a Court of Session, Court of Session has no jurisdiction to try such an offence. This, of course, is not so, for, the offence being one under the Indian Penal Code, Section 28 of the Criminal Procedure Code expressly lays down that it may be tried by a Court of Session whatever be the court by which the offence is shown in the eighth column of the Second Schedule to be triable. The real point is something else. The maximum sentence that can be imposed for an offence under the first part of Section 211 of the Indian Penal Code being imprisonment for two years which is within the competence of a magistrate of the first class to impose, a magistrate holding an inquiry into such an offence cannot possibly reach the opinion that the case ought to be tried by a Court of Session so as to attract Section 207 of the Criminal Procedure Code and, with it, the provisions of Chapter XVIII of the Code. And that, we think would make a commitment of such a case liable to be quashed under Section 215 read with Section 439 and, if necessary Section 561-A of the Criminal Procedure Code whether the commitment be under Section 213 or under Section 207-A (10). In this case, however, we are satisfied that the offence alleged against the accused comes under the second part of Section 211 of the Indian Penal Code and is one exclusively triable by a Court of Session. Hence no question of quashing the commitment arises, and it follows that both the reference and the revision petition have to be rejected.

4. Section 211 of the Indian Penal Code runs as follows :

> "211. Whoever, with intent to cause injury

False charge of offence made with intent to injure. to any person, instituted 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 line, or with both : and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall lie punishable with imprisonment for either description for a term which may extend to seven years, and shall also be liable to fine". All the High Courts are agreed that the word, "charge" as used in the Section applies as much to first information given to the police as to complaint made to a magistrate in the language of Sessions Judge of *Tinnevelly Division v. Sivan Chetty*[1], the word "must not be understood in any technical or restricted sense, but in its ordinary meaning, of a false accusation made to any authority bound by law to investigate it". In this case the charge made by the accused to the police was that certain specified persons had committed an offence under Section 394 of the Indian Penal Code which is at offence

[1] ILR 32 Mad 258 (FB)

punishable with imprisonment for life. If that charge were False, as it is alleged it is then the accused made a false charge against those persons of an offence punishable with imprisonment of life, and all that remains to be satisfied for the purpose of attracting the second part of Section 211 is that a criminal proceeding should have been instituted against those persons on that false charge the "such criminal proceeding" of the second part of the Section is obviously the criminal

proceeding referred to in the first part and must be against a particular person whom it is intended to injure. The charge being of a cognizable offence the police were bound by law to conduct an investigation against the alleged tenders and there can be no doubt that by the first information they gave, the accused instituted (or, at any rate, caused to be instituted) an investigation under Chapter XIV of the Criminal Procedure Cede against those persons. The only question then is whether such an investigation is a criminal proceeding within the meaning of Section 211 of the Indian Penal Code.

5. Neither the word, "proceeding" nor the phrase, "criminal proceeding" is defined in the Indian Penal Code hut we think that the word, "proceeding" is used in Section 211 in the ordinary sense of a prescribed mode of action for prosecuting a right or redressing a wrong and not in the technical sense of a proceeding taken in a Court of law, even the expression "legal proceeding" appearing in Section 446 of the Companies Act has been construed is include proceedings taken by Income-tax authorities for recovery of arrears of Income tax. (See *Governor General in Council v. Shiromani Sugar Mills Ltd*[2]*.,* A criminal proceeding, it seems to us, is as that phrase is defined by Black in the second edition of his Law Dictionary, page 301, a proceeding "instituted and conducted for the purpose either of preventing the commission of crimp or for fixing the guilt of a crime already committed and punishing the offender" The definition of, "investigation" in Section 4(1)(1) of the Criminal Procedure Code as including all the proceedings under this Code for the collection of evidence conducted by a police officer", makes it clear that an investigation under Chapter XIV of that Code is a proceeding and the definition of, "judicial proceeding" in Section 4(1)(m) as including "any proceeding in the course of which evidence is or may be legally taken on oath" shows that the word, "proceedings is not necessarily confined to something done in a Court of law. If an investigation under Chapter XIV is a proceeding we think it necessarily follows that it is a criminal proceeding and the very fact that the expression, "criminal proceeding" in Section 211 of the Indian Penal Code is not qualified by the word, "judicial" or for anything else to show that it is confined to a proceeding before as Court of law of other tribunal, makes it clear that it is wide enough to include a proceeding under Chapter XIV of the Criminal Procedure Code. With great respect we are unable to accept the assumption made in *impress of India v. Pitam Rai*[3]*, Impress v. Prarabu*[4] *Queen Empress Bisheshar*[5] or the view expressly stated in *Sultan Ahmed v. Emperor*[6]*,* (F.R.). *The King v. Ma Run Gyi*[7] and in *Emperor v. Karsan Jesang*[8] that the phrase, "criminal proceeding" in Section 211 of the Indian Penal Code refers only to a criminal proceeding in Court and we respectfully agree with the view taken in the leading cases in *Karim Buksh v. Queen Empress*[9] a decision by a bench of five judges, and *Queen Empress v. Nanjunda Ran*[10] that when a man sets the criminal law in motion against a person by giving information to

[2] AIR 1946 FC 16
[3] ILR 5 All 215
[4] ILR 5 AIR, 598
[5] ILR 16 All 124
[6] AIR 1931 Nag134
[7] AIR 1938 Rang 397
[8] AIR 1941 Bom 114
[9](ILR 17 Cal 574)
[10] ILR 20 Mad 79

the police that that person has committed a cognizable offence, lie institutes a criminal proceeding against that person within the meaning of Section 211 of the Indian Penal Code. For, as we have said, the police are bound by law to investigate the accusation against that person whether they believe it or not and make a final report under Section 173 of the Criminal Procedure Code. That final report may be against some other person or against none at all cannot alter the fact that a criminal proceeding was instituted against the person accused, nor does the circumstance that a police investigation need not necessarily be directed against a definite person (though in the vast majority of cases it is) alter the fart that it is a proceeding against a person

when it is so directed.

6. In AIR 1938 Rangoon 397 the reasoning seems to be that the Legislature included the words, "or causes to he instituted" in the first part of Section 211 to meet cases where, on first information given to the police. The police institute proceedings in Court. Therefore, the expression, "criminal proceeding" must mean only a proceeding in Court : else the words earlier referred to would be redundant. We do not think the words referred to are intended to meet cases where proceedings are instituted in Court through the agency of the police. Rather we think that the words are intended to meet cases where an innocent messenger is employed for the purpose of instituting criminal proceedings either before the police or in Court. It is true that in such a case the real offender might, even otherwise, be, liable as an abettor under Explanation 3 to Section 108 of the Indian Penal Code but possibly it was thought desirable to make him a principal offender and not a mere abettor.

7. The institution of criminal proceedings against a person is generally by charging that person with having committed an offence. But not necessarily, so, for as explained in ILR 17 Cal 574, there can he criminal proceedings without a charge of the commission of an offence and there can be a charge made of the commission of an offence without the institution of criminal proceedings. Though the two expressions overlap and are therefore, not mutually exclusive they are not co-extensive in meaning and it is to rope in all cases covered by the two expressions that the Legislature has used both in the first part of Section 211 of the Indian Penal Code. The second part of the Section provides for an aggravated form of the offence described in the first part. It is confined to false charges involving the institution of criminal proceedings and even so only to false charges of grave offences. That is why the two expressions are not put in the alternative. There must be a criminal proceeding instituted against a person and that must be on a false charge of a grave offence. The punishment depends on the peril to which the false accuser exposes his victim, not on the means he employs, and that peril is surely not greater when he goes direct to court than when he goes to the police charging the victim with a cognizable offence.

8. The learned public Prosecutor has been at great pains to show that the view taken in ILR 17 Cal 574 is the preponderant view and for this purpose he has cited the decisions in ILR 20 Mad 79, ILR 32 Mad 258. *Parmeshwar Lal v. Emperor*[11]. *Emperor v. Johri*[12], dissenting from the earlier Allahabad cases taking the contrary view, *Faiz Alam v. Emperor*[13], *Nanhkoo*

[11] AIR 1925 Patna 678 [12] AIR i931 All 269 [13] AIR 1934 Pesh 112

Mahton a Emperor[14]. *Dharamdas Hiranand v. Emperor*[15], *Balak Ram v. Emperor*[16], and in re. K. Nagayya, 1962 (2) Cri L.J. 719 (AP). We consider that there is little that can he usefully added to what has been said in ILR 17 Cal 574; we have in mind also the extract given in the report from the judgment of the Sessions Judge. ILR 32 Mad 258 and AIR 1931 Allahabad 269.

9. In the result we reject the reference and dismiss the revision petition.
Reference rejected.

[14] AIR 1930 Pal 358 [16] AIR 1942 Oudh 100

[15] AIR 1938 Sind 213