

(1879) 04 CAL CK 0005

Calcutta High Court

Case No: None

Bhokteram

APPELLANT

Vs

Heera Kolita

RESPONDENT

Date of Decision: April 26, 1879

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 468
- Penal Code, 1860 (IPC) - Section 182, 211

Citation: (1880) ILR (Cal) 184

Hon'ble Judges: Broughton, J; Ainslie, J

Bench: Division Bench

Judgement

Ainslie, J.

The prisoner in this case laid an information at the police thanna against Sadheram, Bhokteram, and two others, stating that he suspected them of committing a robbery in his house. The police officer investigated the case, and being of opinion that the information was false, so reported to the Assistant Commissioner. The Assistant Commissioner on the report passed an order of dismissal, purporting to do so u/s 147 of the Criminal Procedure Code. This the Assistant Commissioner should not have done; no complaint had been made to him by the present prisoner, nor could the report of the police officer be regarded as a complaint for this purpose, for he had reported that the information was false. Bhokteram then applied to the Assistant Commissioner for leave to prosecute the prisoner u/s 211 of the Indian Penal Code.

2. No such leave or sanction was necessary; the offence, if there was one, was not committed before any Court; see Section 468| of the Criminal Procedure Code, and the case of the Government of Bengal v. Gokool Chunder Chowdry (24 W.R. 41) and Ram Bunjan Bhandari v. Madhub Ghose (25 W.R., Crim. 33). The Assistant Commissioner did not accord or withhold sanction, but referred the case to the

Deputy Commissioner, a course equally unnecessary for a prosecution u/s 211.

3. The Deputy Commissioner said, that If the Assistant Commissioner is satisfied that Heera gave false information to the police intending to injure Bhokteram, he can, on Bhokteram's application, try the case u/s 182,1 Penal Code.

4. As no authority from the Deputy Commissioner was required in order that the prosecution might proceed u/s 211, this must be regarded either as a mere piece of advice, which, however, the Assistant Commissioner was right to ask if he felt any difficulty, and the Deputy Commissioner was right to give, or as a sanction u/s 467, which requires the sanction of the official superior of the public servant against whom an offence u/s 182 has been committed. The document may be read in two ways. With that the application of Bhokteram for sanction to prosecute Was sufficient to enable the Assistant Commissioner to proceed and try the case u/s 182, Penal Code, or that if Bhokteram made another application, i.e., a complaint, the Assistant Commissioner might safely proceed to try the case under that section.

5. The Assistant Commissioner seems to have read it in the former sense. He issued a summons to Heera to take his trial u/s 182, Penal Code, and directed the Police to produce the necessary evidence. Bhokteram appeared and gave evidence, and the prisoner was convicted and sentenced to three months' rigorous imprisonment u/s 182, Penal Code."

6. Bhokteram does not complain now that he was not allowed to go on with his prosecution u/s 211. But the prisoner, there being no appeal, applied to the Sessions Judge to refer the case to the High Court on two grounds: (i) that he ought to have been tried u/s 211, and not u/s 182, Penal Code; (ii) because it was illegal to put him on his trial without giving him an opportunity of proving his case--i.e., that there really was a theft in his house, and that Bhokteram and Shadiram and the others were bona fide suspected of the theft and the Sessions Judge thinks that there ought to have been a preliminary enquiry.

7. With regard to the first question, the offence u/s 211 includes-an offence u/s 182, and there was no reason why, in a case of this nature, proceedings should not be taken under either section, although it may be, that in cases of a more serious nature the proper course would be to proceed u/s 211.

8. The case of Raffee Mahomed v. Abbas Khan (8 W.R., . 67) was such a case; it could not be dealt with by a Magistrate.

9. With regard to the second objection, Section 471 directs that there shall be a preliminary enquiry before any person can be committed for trial by the Court itself, or sent by the Court to a Magistrate, the object of such an enquiry being, that the Court may be satisfied that there are good grounds for believing that the offence has been committed. When the prosecution is not undertaken by the Court itself, the power entrusted to the Court, or to the superior officer of the public servant, is

intended to be used for the purpose of preventing persons having business before Courts, or public officers, from being harassed by vexatious and groundless prosecutions; and that power is to be exercised by giving or withholding sanction. Here the superior officer has given sanction to the prosecution, and although the "Court" and the superior officer to the public servant may be in some cases one and the same person, it is only when the case arises out of proceedings before him sitting as a Court, civil or criminal, that Section 471 can apply.

10. It follows, therefore, that we do not think that we ought to interfere on the ground put forward by the Sessions Judge. But as we have the record before us, and observe that the prisoner Heera has been convicted, on what appears to us to be no evidence whatever, except the bare statement of the person originally accused, we think that the conviction ought to be set aside on that ground under the provisions of Section 297 of the Criminal Procedure Code.