Present : Jayewardene A.J. 1923.

SUB-INSPECTOR OF POLICE *v.* BABBI.

359—P. C. Avissawella, 5,490.

Penal Code, ss. 180 and 208—No essential difference between the two sections—Section 180 does not apply to information elicited by examination of a person by the police officer or public servant—Information should be voluntarily given—Criminal Procedure Code, s. 122 (3).

" The offence under section 208 of the Penal Code includes an offence under section 180. It is therefore open to a Magistrate to proceed under either section, although in cases of a more serious nature it may be the proper course to proceed under section 208."

There are some distinctions between sections 180 and 208 of the Penal Code. Under section 180 the prosecution must prove that the person who gave the information knew or believed it to be false, that he had a " positive knowledge or belief of the falsity of the information given," while under section 208 the prosecution need only prove that the accused knew that there was no just or

[1] *(1901) 5 N. L. R. 165.* [2] *6 W. R. (Civil Ref.) 14.*

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lawful ground for the criminal proceeding or false charge. A prosecution under section 180 cannot be instituted except with the sanction of the Attorney-General, or on the complaint of the public servant concerned. An offence under section 180 is triable summarily, while an offence under section 208 is an indictable offence.

But there is no essential difference between the two sections, and offences punishable under section 208 are also punishable under section 180, provided it can be proved that the information given is false to the knowledge or belief of the informant. The Court has to exercise its discretion whether it should proceed under section 180 or section 208. In simple cases, it is said, the prosecution should be under section 180. Section 180 only applies to information voluntarily given to a public servant. It does not apply to cases where the information is disclosed in the course of the examination of a person by a police officer or other public servant, especially when the person examined is bound by law to " answer truly " all questions put to him.

The prohibition contained in section 122 (3) against statements to a police officer, or inquirer, being admitted in evidence, except for the purposes specified therein, applies only to statements made by witnesses examined by a police officer, or inquirer, who are bound to " answer truly " all questions put to them. It has no application to the information relating to a cognizable offence given by an informant and recorded in " The Information Book " under section 121 (1).

The proviso to section 122 (3) that " nothing in this sub-section shall be deemed . . . . to prevent such statements being used as evidence in a charge under section 180 of the Ceylon Penal Code " cannot effect the correct construction of sections 180 and 208.

" I cannot help thinking that the addition of these words is due to a misapprehension of the scope of section 180."

THE facts are set out in the judgment.

Akbar, *S.-G.* (with him *Dias*, *C.C.*, and *Vytalingam*, *C.C.*), for the Crown.

July 20, 1923. JAYEWARDENE A.J.—

In this case the Solicitor-General appeals against the acquittal of the accused who was charged with an offence under section 180 of the Penal Code. The charge against the accused was that he had falsely complained to the officer in charge of the Avissawella Police Station that one Babbi had caused hurt to him with a knife. This was a cognizable offence. The police investigated the complaint under chapter XII. of the Criminal Procedure Code and found the charge to be false, and so reported to Court. The case was numbered 5,363, but the accused took no steps to prosecute his complaint against Babbi. The police now charge him with having given false information to a public servant, viz., the officer in

charge of the Avissawella Police Station, that he was cut with a knife by Babbi, an offence punishable under section 180 of the Ceylon Penal Code. After the case for the prosecution was closed the accused was acquitted, the learned Magistrate upholding the contention for the accused that the charge against him ought to have been under section 208, and not under section 180. In his judgment the learned Magistrate says—

> " In my opinion, where false information has been given to the police against anyone to his detriment, the police should prosecute under section 180, Ceylon Penal Code, but where a definite charge, which is found to be false, has been made against a person, the accused should be charged under section 208, Ceylon Penal Code.
>
> " In my opinion, accused has not, in this instance, committed an offence under section 180, Ceylon Penal Code."

No authorities were cited, but there are two local cases which support the learned Magistrate's conclusion, *Seraph v. Kandyah*[1] and *Jayasinghe v. Siyadoris Appu.*[2] Even if the conclusion arrived at by the Magistrate is right, the order of acquittal is wrong. An offence under section 208 is non-summary, and if he thought that the accused ought to have been charged under that section, he should have proceeded to take non-summary proceedings under section 193 (2) of the Criminal Procedure Code, instead of acquitting him. The learned Solicitor-General, however, contends that the facts disclose an offence under section 180, although an offence under section 208 may also be disclosed. This is the main point argued before me. The point, it is said, is of some practical importance, especially in view of the fact that by section 122 (3) of the Criminal Procedure Code statements made to a police officer, in the course of an investigation, are expressly made admissible in a charge under section 180 of the Penal Code. Such statements are not available in a charge under section 208 of the Penal Code.

That the two sections, 180 and 208, do overlap each other to some extent seems clear, and the question is whether information given to a police officer of a cognizable offence does not fall under both sections. Section 180 of the Ceylon Penal Code, which corresponds to section 182 of the Indian Penal Code, is as follows :—

> " Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit to do anything which such public servant

[1] *(1905) 13 N. L. R. 10.*

[2] *(1909) 13 N. L. R. 9.*

ought not to do or omit, if the true state of facts respecting which such information is given were known to him, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

The Indian section has been altered by a re-arrangement of the words of the second part of the section, but this alteration does not affect the point now raised. Section 208, which corresponds to section 211 of the Indian Penal Code, is 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, or imprisonment for seven years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Now, it has been held in India in *Karim Buksh v. The Queen Empress*,[1] *Queen Empress v. Nanjunda Rau*,[2] and *Emperor v. Hardwar Pal*,[3] and also locally in *Seraph v. Kandyah* (*supra*), *The King v. Girihagama*,[4] and *Jayasinghe v. Siyadoris Appu* (*supra*) that a complaint to a police officer of a cognizable offence (that is, an offence for which a peace or police officer may, in accordance with the provisions of the Criminal Procedure Code, arrest without a warrant) which the police officer has power to investigate under chapter XII. of the Criminal Procedure Code, amounts to the institution of criminal proceedings.

It has also been held that the term "false charge" in section 208 (211) does not include every complaint, but only such complaints or charges as are made to a Court or to a police officer who has power to investigate and send up for trial, or to take any steps in regard to it, such as giving information of it to superior authorities. See *Queen Empress v. Jamoona*,[5] *Queen Empress v. Karigowda*,[6] *The Sessions Judge of Tinnevelly v. Sivan Chetti*,[7] and *The Emperor v. Mathura Prasad*.[8]

In the present case, the complaint made by the accused against Babbi was a complaint of a cognizable offence (an offence under

[1] (*1888*) *17 Cal. 574.*
[2] (*1896*) *20 Mad. 81.*
[3] (*1912*) *34 All. 522.*
[4] (*1909*) *12 N. L. R. 137, also 1 Curr. L. R. 32.*
[5] (*1881*) *6 Cal. 620.*
[6] (*1894*) *19 Bom. 51.*
[7] (*1909*) *32 Mad. 258.*
[8] (*1917*) *39 All. 715.*

section 315 of the Ceylon Penal Code) which the police could investigate under chapter XII. He has, therefore, clearly committed an offence under section 208. But does the fact that he made a complaint of a cognizable offence to a police officer prevent it being regarded as information given to a public servant under section 180 ? There are some distinctions between the two sections which should be noted. Under section 180 the prosecution must prove that the person who gave the information knew or believed it to be false, that he had a " positive knowledge or belief of the falsity of the information given," while under section 208 the prosecution need only prove that the accused knew that there was no just or lawful ground for the criminal proceeding or false charge. In *Ragharendra v. Kashinathbhat*[1] Ranade J. said :—

> " If plaintiff in the present case had chosen to prosecute the offender under section 182, it would not have been necessary for him to prove malice and want of probable and reasonable cause, except so far as they were implied in the act of giving information known to be false, with the knowledge or likelihood that such information would lead a public servant to use his power to the injury or annoyance of the complainant. In an inquiry under section 211, on the other hand, proof of absence of just and lawful ground for making the charge is an important element. There is good reason for this distinction."

In another case, *Emperor v. Ramachandra*,[2] the Court said :—

> " Section 182 relates only to cases of information given to officials with the intention of causing, or with knowledge that it is likely to cause, that official to do, or omit to do, something which he ought not to do or omit to do, or to use his lawful power to the injury or annoyance of any person. This is a distinct offence from that described in section 211, Indian Penal Code, which relates to an attempt to put the Criminal Courts in motion against another person. This action, which section 211, Indian Penal Code, renders penal, is action entailing very serious consequences, and therefore the more serious consideration is required of the individual who takes it. It is sufficient, therefore, in such cases for the prosecution to establish that there was no just or lawful ground for the action taken and that the accused knew this. But something more is required in the case of action referred to in section 182, Indian Penal Code. To bring a case within that section, it is necessary for the prosecution to prove, not merely absence of reasonable or probable cause for giving the information, but a positive knowledge or belief of the falsity of the information given."

[1] *(1894) 19 Bom. 717 at 725.*

[2] *(1901) 31 Bom. 204.*

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A prosecution under section 180 cannot be initiated except with the sanction of the Attorney-General, or on the complaint of the public servant concerned. An offence under section 180 is triable summarily, while an offence under section 208 is an indictable offence.

But the trend of judicial decisions in India has been to hold that there is no essential difference between the two sections, and that offences punishable under section 208 are also punishable under section 180, provided it can be proved that the information given is false to the knowledge or belief of the informant. The Court has to exercise its discretion whether it should proceed under section 180 or section 208. In simple cases, it is said, the prosecution should be under section 180. See *Gour's Penal Law of India, paragraph 1569 (1st edition)*. So far back as 1879 it was laid down in *Bhokteram v. Heera Kolita*,[1] where it was contended that the accused ought to have been tried under section 211 (208) and not under 182 (180), that the offence under section 211 includes an offence under section 182, and that it was therefore open to a Magistrate to proceed under either section, although in cases of a more serious nature it may be that the proper course is to proceed under section 211. In 1890 the Calcutta High Court, by a Full Bench judgment, *Karim Buksh v. The Queen Empress (supra)*, decided that a complaint to a police officer of a cognizable offence which the police officer had power to investigate amounts to the institution of criminal proceedings within the meaning of section 211 (208) of the Indian Code, and that a person so complaining is guilty of an offence under section 211. The case of *Bhokteram v. Heera Kolita (supra)* was not referred to in the judgment, and the point there decided and now raised here was not dealt with.

But in *Giridhari Naik v. Empress*,[2] Ameer Ali and Platt JJ. thought that this question had been decided in the Calcutta Full Bench case in a sense contrary to the decision in *Bhokteram v. Heera Kolita (supra)*, and said :—

> "The questions submitted to us are whether the prosecution should not have been under section 211 of the Indian Penal Code, if at all, and not under section 182; . . . . so far as the first question is concerned, it seems to us that the matter is concluded by the Full Bench ruling in the case of *Karim Buksh v. Queen Empress (supra)*, where it was substantially decided that when a false charge is made to the police of a cognizable offence the offence committed by the person making the charge falls within the meaning of section 211 of the Indian Penal Code."

[1] *(1879) 5 Cal. 185.*

[2] *(1901) 5 C. W. N. 727.*

The soundness of this decision was soon afterwards challenged in *Emperor v. Sarada Prosad Chatterjee.*[1] The Judges there, after stating that it was expressly laid down in *Bhokteram v. Heera Kolita* (*supra*) that an offence may fall under both sections, and that an offence under section 211 includes an offence under section 182, said :—

> " The only case that supports the sessions Judge's contention is *Giridhari Naik v. Empress* (*supra*). There it was declared that a false charge made to the police of a cognizable offence falls under section 211, and not under section 182, and the Court in so deciding treated the question as concluded by the Full Bench in *Karim Buksh v. The Queen Empress* (*supra*), but that question was not before that Full Bench, for the Full Bench in that case only decided that a false charge made to the police of a cognizable offence falls under section 211 (about the applicability of the latter part of which section to such cases there had been some doubt), and did not decide anything about section 182. The last ruling is in *Ram Logan Lal v. Emperor,*[2] and there the Court followed *Karim Buksh v. Queen Empress* (*supra*) and decided nothing about section 182.
>
> " We have now noticed all the rulings cited by the District Judge and other cases. The law still remains as it was laid down in *Bhokteram v. Heera Kolita* (*supra*), and we entirely accept that view. That read with *In re Russick Lal Mullick,*[3] lays down that a prosecution for a false charge may be under section 182 or section 211 ; but if the false charge was a serious one, the graver section 211 should be applied and the trial should be full and fair."

But there are two decisions in Ceylon which I have referred to and which conflict with this view. In the earlier case, *Seraph v. Kandyah* (*supra*), the accused had been convicted under section 180. He had made a false charge to the police sergeant against another person of having committed a cognizable offence. It was contended for him that the charge against him should have been under section 208, and not under section 180. Layard C.J. there said :—

> " That is an offence punishable under section 208 of the Penal Code, and it requires that the prosecution should prove, besides the falsity of the charge, that the person who made that charge knew that there was no just or lawful ground for such a charge against the person falsely charged by him.
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> " It has been held in India in a similar case to this, wherein the accused made a charge to the police in which he specified the name of a person whom he charged with having

[1] *(1904) 32 Cal. 180.* [2] *(1903) 7 C. W. N. 556.*
[3] *(1880) 7 C. L. R. 382.*

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committed an offence, that the accused committed an offence punishable under the Indian section similar to our section 208, and not an offence punishable under the Indian section similar to our section 180. The appellant, therefore, in this case, has not committed the offence of which he has been convicted under section 180 . . . ."

In the later case, *Jayasinghe v. Siyadoris Appu* (*supra*), in which also the accused had been convicted under section 180 for having given false information to a police constable that one Deonis had committed theft, this Court followed the previous decision and acquitted the accused ; Grenier J. saying that he agreed with the *ratio decidendi* of that case. In his judgment in *Seraph v. Kandyah* (*supra*) the learned Chief Justice speaks of an Indian case, but unfortunately he does not mention either the name of the case or the report in which it appears. No argument of Counsel is given. If the reference is to the Calcutta Full Bench case, that case did not decide the point. If the reference is to the case of *Giridhari Naik v. Empress* (*supra*), that case proceeded on the assumption that the Calcutta Full Bench case had decided a point which it had not in fact decided. It has been overruled. See *Emperor v. Sarada Prosad Chatterjee* (*supra.*)

No Indian case can be cited in support of the principle laid down in the two Ceylon cases, except, of course, *Giridhari Naik v. Empress* (*supra*), which, as I have pointed out, cannot be considered any longer as an authority. Then there is a third Ceylon case, *The King v. Girihagama* (*supra*), in which the accused was charged under both sections (180 and 208) in respect of the same facts. The facts appear in the report of the case in the *Current Law Reports*. The accused gave information to the Superintendent of Police that one Ekiriwatte and others had committed arson. The information given by the accused was found to be false to his knowledge. He was charged, under section 208, with having instituted a criminal proceeding against Ekiriwatte and others knowing that there was no lawful ground for such proceedings. On the same facts the accused was also charged on the same indictment, under section 180, with having given to a public servant information which he knew or believed to be false. The accused was convicted on both counts, and sentenced to separate terms of imprisonment. Grenier A.J., in dealing with the contention put forward on behalf of the accused that he should not have been convicted on both counts as the facts were the same and related to the same transaction, said :—

" I find that the offence charged in the first count is quite distinct from that which forms the subject of the second count, and although they may have been committed in the course of one transaction, they are, in my opinion, separate and independent of each other.

> " In the present case the appellant gave false information to the Superintendent of Police, which constituted an offence under section 180, and in giving such information with intent to cause injury, he instituted or caused to be instituted a criminal proceeding against the persons I have mentioned, which constituted quite a different offence under section 208."

After referring to some authorities, and holding that the giving of information to a police officer is tantamount to the institution of a criminal proceeding, he added :—

> " I have, therefore, little or no hesitation in holding that the second count of the indictment is sustainable in law. Here too, as in the Madras case, the offence was a cognizable one ; and although, perhaps, the powers of the Indian police are larger than those of the Ceylon police, the same principle or rule in regard to arrests without a warrant, in the case of cognizable offences, equally applies."

This decision (May, 1909) seems to be contrary to the decision in the two cases reported in Volume XIII. of the *New Law Reports*, one of which was before (1905) and the other after (November, 1909) this decision. It establishes that information of a cognizable offence, if proved to be false to the knowledge or belief of the informant can form the foundation of a charge under section 180, although the giving of such information amounts to the institution of a criminal proceeding. There it adopted the principle laid down by the Calcutta High Court in *Emperor v. Sarada Prosad Chatterjee* (*supra*).

Then it may be said that the two Bombay cases, *Ragharendra v. Kashinathbhat* (*supra*) and *Emperor v. Ramachandra* (*supra*), referred to above, support the view taken in the two local cases, *Seraph v. Kandyah* (*supra*) and *Jayasinghe v. Siyadoris Appu* (*supra*). The first case was not a criminal case, but was a civil action for defamation arising out of a false complaint made to the police by the defendant. The point now under discussion was not raised or argued there, and the observations of Ranade J. cannot be regarded as authoritative. In fact, he does not decide the point involved in this case. In the second case, the Court, no doubt, said that—

> " This (under section 182) is a distinct offence from that described in section 211, which relates to an attempt to put the Criminal Courts in motion against another person ;"

and it went on to explain what the prosecution has to prove under sections 182 and 211 respectively. Ultimately, it held that the prosecution had failed to establish positive and conscious falsehood on the part of the accused, who had been convicted under section 182, but it nowhere stated that, if the prosecution had succeeded

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in proving positive and conscious falsehood, the conviction under section 182 would have been wrong. In fact, that case too did not deal with the point under discussion, and lends no support to the view taken by Layard C.J. in *Seraph v. Kandyah* (*supra*).

Such being the state of the authorities, I think that *Emperor v. Sarada Prosad Chatterjee* (*supra*), which followed *Bhokteram v. Heera Kolita* (*supra*), should be taken as laying down the correct principle. It affords a good working rule. To re-state it :—

> " The offence under section 208 includes an offence under section 180 ; it is therefore open to a Magistrate to proceed under either section, although in cases of a more serious nature it may be the proper course to proceed under section 208."

I have discussed the question so far without reference to the proviso to section 122 (3) of the Criminal Procedure Code, which is in these terms :—

> " Nothing in this sub-section shall be deemed . . . . to prevent such statement being used as evidence in a charge under section 180 of the Ceylon Penal Code."

This proviso cannot affect the correct construction of section 180 or 208. I cannot, however, help thinking that the addition of these words is due to a misapprehension of the scope of section 180. In my opinion section 180 only applies to information voluntarily given to a public servant. It does not apply to cases where the information is disclosed in the course of the examination of a person by a police officer, or other public servant, especially when the person examined is bound by law to " answer truly " all questions put to him. See section 122 (2) of the Criminal Procedure Code. As was observed in the case of *Emperor v. Naga Aung Po*[1] :—

> " The plain ordinary meaning of the expression ' give information ' is to volunteer information, not to make statements in answer to questions put by the public servant, and it would be importing into the section (180) a meaning which cannot be presumed to have been contemplated by the Legislature to say that this section covers such statements."

Now, chapter XII. of the Criminal Procedure Code, as amended by Ordinance No. 37 of 1908, is headed " Investigation of Offences," and provides for the giving of " Information to police officers and inquirers and their powers to investigate." (Sections 120 to 132.)

Section 121 (1) requires that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a ploice station, shall be reduced to writing and be read over to the informant. It must also be signed by the person giving

[1] (*1905*) *2 C. L. J. (Indian) 447.*

the information. A copy of it must be entered in a book which is called the " Information Book." It is, of course, permissible for the police officer to question the informant to obtain all necessary particulars. The answers to such questions would form part of the information given. In practice I find that this information is entered directly in the " Information Book," which the informant signs.

If, from the information so received, the officer in charge of the police station has reason to suspect the commission of a cognizable offence, he is required to send a report to his immediate superior, and, if he thinks there is sufficient ground for entering on an investigation, to proceed in person to the spot to investigate the facts and circumstances, and to take the steps necessary for the discovery and arrest of the offender. (Section 121 (2).) The Police Officer making such an investigation may in writing order the attendance of any person who appears to be acquainted with the circumstances of the case. (Section 121 (3).) Then comes the important section, section 122, which enables the police officer holding the inquiry to examine orally any person supposed to be acquainted with the facts and circumstances of the case. The statements made by the persons so examined must be reduced to writing, but no oath or affirmation shall be administered, nor shall such person be required to sign his statement, but such person is bound to answer truly all questions (with two specified exemptions) put to him by the officer. These statements must be recorded or entered in the " Information Book."

It is to statements recorded under section 122 that the sub-section (3) of that section applies. This sub-section makes these statements inadmissible in evidence, and they can be used only for the purpose of proving that a witness made a different statement at a different time, or of refreshing the memory of the person recording it.

There are other provisions in the sub-section which need not be referred to here. Then there is the proviso which I have given above. That part of the proviso is new. It is not to be found in the repealed sections 125 and 131 (2) of chapter XII. of the Criminal Procedure Code or in the corresponding sections of the Indian Criminal Procedure Code, Act V. of 1898, sections 162 and 173 (2).

Does the addition of these words to section 122 (3) enable statements made in the course of the examination of a person under section 122 (1) to be used as evidence in a charge under section 180 ? It should be clearly noted that section 122 and its sub-sections do not apply to information given under section 121. The information given under that section is a complaint, and is presumed to be given voluntarily, although the police officer may put questions to the informant to find out all the essential and necessary facts which go to constitute the real complaint. This information or complaint, although entered in the Information Book, is not inadmissible in

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evidence under section 122 (3), and can be used as evidence in a prosecution under sections 180 or 208 of the Penal Code, or for any other purpose for which it is relevant. It has been held in a Madras Full Bench case, *The Sessions Judge of Tinnevelly v. Sivan Chetti* (*supra*), by Benson and Munro JJ. (Sankaran Nair J. dissenting), that where a complaint of a cognizable offence was made to a village headman, who was bound to pass the complaint on to a police officer, and the police officer who received it came to the village and held an inquiry, in the course of which he examined the informant, the informant must be regarded as having made a complaint or given information under section 154 of the Indian Criminal Procedure Code, which corresponds to section 121 (1) of our Code, and that he was liable to be charged under section 211 of the Indian Penal Code, thus overruling *Gowd v. Emperor*[1] and following *Emperor v. Venkatiyada*.[2]

The same considerations do not apply to the statements made under section 122 (1), which provides for the examination of persons other than the informant. Such statements cannot be regarded as voluntary, but as made in answer to questions which the person examined is bound to "answer truly."

If in the cousre of such an examination a charge is made against a person, it may be that the officer holding the inquiry has the power to make a record of the statement as information given under section 121, and to require the person giving it to sign the information after it has been read over to him. Unless this is done, it is impossible to say that a person making a statement under sub-sections (1) and (2) of section 122 gives information, makes a charge, or institutes a criminal proceeding. I find that the mere insertion of the words—

> "Nothing in this sub-section shall be deemed . . . . to prevent such statement being used as evidence in a charge under section 180 of the Ceylon Penal Code"

would not render a person, who discloses information or an accusation which is proved to be false, liable to be dealt with under section 180 of the Penal Code. What I refer to here is to the statements being used as the foundation of a charge under section 180, but they may, of course, be used for collateral purposes, such as to corroborate the evidence a witness has given in a prosecution under section 180. The proviso in question cannot be construed as in any way amending section 180 and enlarging its scope.

I therefore set aside the order of acquittal made by the Magistrate, and direct that the accused be tried summarily under chapter XVIII. of the Criminal Procedure Code on the charge framed against him under section 180 of the Penal Code, as the case is not a serious one.

Set aside.

[1] *(1908) 31 Mad. 506.*

[2] *(1905) 28 Mad. 565.*