1927.

Present : Drieberg A.J.

THE KING *v.* CAROLIS.

4—D. C. (Crim.) Negombo, 3,789.

False charge—Complaint of a non-cognizable offence to the Police—Meaning of words—Penal Code, s. 208.

A person who makes a false complaint of a non-cognizable offence to the Police may be said to charge another falsely within the meaning of section 208 of the Penal Code.

The words "falsely charge" must be understood in the ordinary meaning of a false accusation made to any authority, bound by law to investigate or to take any steps in regard to it, such as giving information of it to superior authorities with a view to investigation.

APPEAL from a conviction by the District Judge of Negombo. The appellant, a Police Headman, was convicted under section 208 of the Penal Code with having falsely, and with intent to injure, charged a woman called Karonona, with having caused a miscarriage. It was contended that the evidence, even if accepted, did not justify a conviction under section 208, as the appellant in sending up a written report to the Police was acting under section 22 of the Criminal Procedure Code, and, further as the offence alleged against the woman was one under section 303 of the Penal Code and non-cognizable, the Police had no power of investigation without an order from the Police Magistrate under section 129 of the Criminal Procedure Code.

H. V. Perera (with *Sri Nissanka*), for accused, appellant.

J. E. M. Obeysekere, C.C., for the Crown.

April 27, 1927. DRIEBERG A.J—

The appellant has been convicted of an offence punishable under section 208 of the Penal Code, viz., of having falsely and with intention to injure charged Karonona with having caused a miscarriage.

The appellant, who is the Police Headman of Godigomuwa, was sentenced to pay a fine of Rs. 700, in default four months' rigorous imprisonment. If the fine was paid, Rs. 250 was to be given to Karonona.

I see no reason to differ from the learned District Judge on his finding of fact in this case. It has been clearly proved that the action of the appellant was prompted by malevolence, and that he

had no belief in the charge he made and cannot claim to have acted *bona fide*. It is more than likely that Juan and Puran had more to do with this than they admit. The appellant in his report to the Police does not mention them as his informants, and it is significant that the appellant did not get their signatures to the complaint they are said to have made to him. It seems to me that this was a carefully designed scheme by which the Headman desired to injure the family of Karonona while keeping himself and his alleged informats safe, so he thought, from any responsibility for the institution of such proceedings as should follow. The Headman could exculpate himself by saying he acted on information, while Juan and Puran (the informants) could deny that they gave the information.

If Juan and Puran play the part in it which I think they did, it in no way affects the finding of the learned District Judge, but if anything makes the appellant's conduct worse.

Mr. Perera, for the appellant, contended that the evidence if accepted did not justify a conviction under section 208. He submitted that the essence of the offence was that it should be a charge in the sense of an accusation; that the term "charge" could not be applied to a case like this, where the appellant in sending up a written report to the Police did no more than he was bound to do under section 22 of the Criminal Procedure Code, and, further, that the offence which was alleged against Karonona was one under section 303 of the Penal Code, and being non-cognizable the Police had no power of investigation without an order from a Police Magistrate under section 129 of the Criminal Procedure Code.

The complaint itself of the offence being false to the knowledge of the writer, it becomes then merely a question whether the offence is one under section 208 or section 180 of the Penal Code.

Section 208 deals with two things: first the institution of the criminal proceedings, and second, a charge.

As regards the first there can be no doubt; examples of this are afforded by a complaint direct to a Police Magistrate who has jurisdiction, or a complaint to the Police of the commission of a cognizable offence.

But the object of the section was to make it punishable if a person set the Criminal law in motion against another in certain circumstances, and the Criminal law may be set in motion otherwise than by this direct action. The distinction between the two expressions "institute proceedings" and "charge" is well explained in the case of *Karim Buksh v. Queen Empress*,[1] where it has been pointed out that a charge to the Police of a non-cognizable offence or a complaint to a Judge of a Civil Court or to Public Officers of other kinds in order to obtain sanction to prosecute may well be a charge within the meaning of this section though it could not be described as the institution of criminal proceedings.

[1] *17 Cal. 574.*

1927.

DRIEBERG A.J.

The King v. Carolis

The words " false charge " in the section must not be interpreted in any restricted or technical sense, but must be understood in its ordinary meaning of a false accusation made to any authority bound by law to investigate it or to take any steps in regard to it, such as giving information of it to superior authorities with a view to investigation for other proceedings and so setting the Criminal law in motion. (*Sessions Judge of Tinnevelly Division v. Sivan Chetty.*[1])

I was referred to the case of *Chedi v. King Emperor* [2], the report of this case is not available. but from the note of it in *Sanjiva Row's All India Digest 1836-1915, Vol. II., 3598*, it would appear that the complaint was one made to a Collector of certain persons entering the house of the writer and forcibly inoculating his wife and children. It does not appear that the position of the Collector was in any way similar to that of the Police when they receive information of a non-cognizable offence.

It is difficult to see how a person who makes complaint of a non-cognizable offence to the Police cannot be said to set the Criminal law in motion. Cases may, no doubt, occur where a complaint may be made to a person in authority, but where it cannot be said that such action amounted to setting the Criminal law in motion. In the matter of the *Petition of Jamoona* (*The Empress v. Jamoona*[3]), a complaint was made to the adjutant of a regiment falsely charging a non-commissioned officer with rape. It was held that the offence was not one punishable under section 211, which corresponds to section 208 of the Ceylon Penal Code, for the reason that the Station Staff Officer had neither magisterial nor police power.

I may now deal with the argument that the appellant was acting under a statutory duty in reporting the matter to the Police, and that any responsibility for further proceedings rested with the police. There are many cases in which this would be a good defence. But the real test appears to be the intention of the person making the report; did he act with the intention and object of setting the Criminal law in motion against the person against whom the false charge was preferred? (*Rayenkutti v. The Emperor.* [4])

If there is no intention to set the Criminal law in motion, a false charge may fall within section 180 of the Penal Code.

In the present case the appellant sent in a statement of an offence which was a pure invention of his. He was a Headman, he knew the consequences which would follow on his action, and I must presume that he knew that he was setting the Criminal law in motion against Karonona.

I dismiss the appeal.

Appeal dismissed.

[1] *32 I. L. R. Mad. 258.*
[2] *7 A. L. J. 618.*
[3] *(1881) 6 Cal. 620.*
[4] *26 Mad. 640.*