

Present : Schneider A.J.

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46—P. C. Colombo, 33,162.

Penal Code, s. 211—Gratification to screen offender who has committed a compoundable offence—Gratification must be in respect of offence actually committed.

Section 211 of the Penal Code applies to cases where the offence is not compoundable.

The section penalizes the offer of gratification when they are offered to prevent the legal consequences of offences actually committed.

Accused offered gratification to a police officer and asked the officer to allow the tavern to be open for some time after hours. There was no proof that the tavern was kept open after hours at any date up to the payment of the money.

Held, that no offence was committed.

THE facts appear from the judgment.

H. J. C. Pereira, for the accused, appellant.

No appearance for the respondent.

Cur. adv. vult.

February 9, 1921. SCHNEIDER A.J.—

The Magistrate has accepted the evidence for the prosecution. It may be summarized as follows : The accused, who is interested in one or more arrack taverns, came to the residence of Wagiswara,

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a Sub-Inspector of Police, on December 2, 1920, and offered him Rs. 50, "saying it was for two months, and asked the officer not to molest the accused, but to allow the tavern to be open five or six minutes." The police officer would not take the money. He asked the accused to make the payment to one Perera, leading the accused to believe that the money would reach him through that channel. He then reported the incident to his superior officer. The accused took the money and paid it to Perera on December 5, asking him to give it to the Inspector and say it was for October and November. The Magistrate convicted the accused "of an attempt to bribe Sub-Inspector Wagiswara with Rs. 50 in consideration of his allowing tavern (?) to be left open after hours." This he stated as being an offence punishable under sections 211 and 490 of the Penal Code. He sentenced the accused to six weeks' rigorous imprisonment. The accused has appealed. I will accept the learned Magistrate's findings of fact. It was argued on behalf of the appellant that, even assuming the facts to be as found by the Magistrate, the conviction was bad for two reasons. First, because no offence had, in fact, been committed in respect of which the gratification had been offered; and, secondly, because even if the offence of selling arrack outside the hours fixed by the license had been committed, the offence was compoundable, and therefore section 211 could not apply by reason of the exception at the bottom of that section. It seems to me that both these objections are fatal to the conviction; but as the first of them is by itself conclusive, there is no need to consider the second at any length. I will, therefore, proceed to consider the first. Here let me say that the language in which the Magistrate has recorded the conviction, and which I have already quoted, is obviously inappropriate, and does not disclose an offence punishable under section 211. I will, accordingly, assume that the conviction is that the accused offered a gratification of Rs. 50 to the Inspector in consideration of the Inspector screening the accused or any other person, or not proceeding against them for the purpose of bringing them to legal punishment, for keeping open an arrack tavern beyond licensed hours. Offences are divided variously into bailable and non-bailable, cognizable and non-cognizable, indictable and summary, compoundable and non-compoundable. The first three of these divisions are based upon procedure, but the last upon something deeper, namely, the nature of the offence. In regard to punishment, certain offences are regarded as violations of the rights of the State as a State, or of society at large, and, therefore, that the prevention or the punishment of them is the concern of the State, while other offences are regarded as violations of the rights of private individuals, and the punishment of these as primarily the concern of those individuals. These latter are called "compoundable offences." If the individual injured is willing to accept compensation, the law will not forbid him,

but if he will not, but desires punishment, he is entitled to invoke the assistance of the Courts of criminal jurisdiction. It is in recognition of the existence of this principle of the criminal law that the exception is added to section 211 excluding from the operation of the section "any case in which the offence may lawfully be compounded."

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It is therefore evident that section 211 was intended to apply to cases where the offence is not compoundable, that is, the offences which are regarded as violations of the rights of the State *qua* State. Section 211 is placed with a number of other sections in a chapter of the Code which is headed "Of False Evidence and Offences against Public Justice." The section is therefore intended to penalize cases of offences against "Public Justice." It seeks to punish any one who through the means of a gratification endeavours to prevent or prevents an offender from being brought to justice. The language of the section is that the gratification should be given or offered in consideration (1) of the "concealing of an offence," (2) or "of screening any person from legal punishment for any offence," (3) or "of not proceeding against any person for the purpose of bringing him to legal punishment." The language of the section, therefore, obviously indicates that an offence must in fact have been committed. The opening words of the kindred section (section 209) are "Whenever an offence has been committed." It is not only the language of the section, but the very reason of the provision demands that an offence should have been committed. If a person actuated by a mistaken belief that an offence had been committed, when in fact no offence has been committed, offers gratification, the effect of his act will not be to screen or to prevent punishment overtaking an offender, because there is no offender in fact. The law, in other words, is not concerned in this section to penalize the offer of gratifications to persons to prevent action against offences which might or might not be committed. It seeks to penalize such gratifications when offered to prevent the legal consequences of offences actually committed. This section has been so construed by this Court in the case of *Suppiah v. Kadir Kamer*,¹ and in India the same construction has been placed upon the corresponding section of the Indian Code in *Queen v. Saminatha*.²

The evidence in this case proves that no offence was committed during the months of October and November for which the bribe was said to have been offered or paid, nor had any offence been committed up to December 5, the date of the payment of the Rs. 50.

I therefore hold that there is no proof that the sum of Rs. 50 was offered or paid in respect of any offence which had been committed, and that the prosecution fails on this account. Although not necessary for the disposal of this appeal, I would add that the offence of keeping a tavern open outside the hours fixed by a license

¹ (1905) 8 N. L. R. 114.² I. L. R. 14 Mad. 400.

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appears to be created by a rule under section 31 (2)(l) (vii.) of "The Excise Ordinance, No. 8 of 1912." It is made punishable under section 45. The offences punishable under section 45 are compoundable according to the provisions of sections 53, which enacts that it is within the competence of a Government Agent, or Excise Officer specially empowered, to accept a sum of money from any person "by way of composition for the offence," and that the payment of such money shall be a bar to further proceedings. That clearly means that the offence is compoundable. For this reason, too, the conviction must fail.

The conviction is, therefore, set aside and the accused acquitted.

Set aside.

