

1922.

Present : Ennis J.

APPUHAMY v. SIDDAPPU.

528—P. C. Matala, 18,445.

False information to public servant—Penal Code, ss. 180 and 208—Higher offence disclosed in complaint—Proceedings taken for lower offence.

Where a complaint discloses a *prima facie* case of a higher offence, it is not right for a Magistrate to take proceedings for a lower offence.

Accused gave false information to a Korala that another person had caused hurt to him, knowing such information to be false, and intending to cause the Korala to use his lawful power to the injury or annoyance of such other person. The Magistrate convicted accused under section 180 of the Penal Code. The Supreme Court set aside the conviction, and sent the case for non-summary proceedings under section 208 of the Penal Code.

"Although a Korala is not a public servant directly concerned in the institution of criminal proceedings, he has the power to present a complaint to the Court under section 148 (b) of the Criminal Procedure Code, which means that he has the power to institute proceedings."

*Jayasinghe v. Siyadoris Appu*¹ and *Seraph v. Kandyah*² considered.

THE facts appear from the judgment.

Schokman, for the appellant.—The accused has committed no offence under section 180 of the Penal Code, since he charged a definite person in his complaint to the Korala, and after obtaining a report from the latter he instituted criminal proceedings in the Village Tribunal. Section 208 makes special provision for a false charge, while the illustrations to section 180 show that the information referred to in the section is not that relating to the commission of an offence. The charge cannot be altered in appeal, since section 108 is, and section 208 is not, triable by a Police Magistrate summarily.

Counsel cited 13 N. L. R. 10 and 9 and (1913) 15 Bom. L. R. 574.

Vythilingam, C. C., for the Crown.—The information referred to in section 180 may be of any description. Though proceedings in this case could have been taken under section 208, which is a more serious offence, there is no reason why a conviction under section 180, a lower offence, should not be maintained.

¹ (1909) 13 N. L. R. 9.

² (1905) 13 N. L. R. 10.

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This is an appeal from a conviction under section 180 of the Penal Code. The complainant was a Korala and he complained that the accused had given him false information that one Appu Singho had voluntarily caused hurt to him by striking him with a stone on his head, and he asserted that the accused knew that this information was false and intended to cause the complainant to use his lawful power to the injury or annoyance of the said Appu Singho. There is no appeal on the facts, but a point of law has been urged, that the Magistrate should not have taken summary proceedings for the trial of an offence under section 180, because the facts set out in the complaint disclosed an offence under section 208 of the Code, which was triable by a higher Court. The complaint does seem to assert a *prima facie* case of an offence under section 208. Although the Korala is not a public servant directly concerned in the institution of criminal proceedings, he has the power to present a complaint to the Court under section 148 (b) of the Code of Criminal Procedure, which means that he has the power to institute proceedings. Two cases have been cited by the appellant in support of his contention. The first of these is *Jayasinghe v. Siyadoris Appu*.¹ In that case the Court agreed with the decision in a previous case and acted upon it. The previous case has been reported on page 10 of the same volume of reports. It is the case of *Serapah v. Kandyah*.² In that case Layard C.J., held that the appellant had not committed an offence under section 180, because an offence had been disclosed under section 208, but, holding that he could not himself convict him under section 208, as he was not in a position to do so, he acquitted the accused. The decision in that case followed some Indian decision which was not cited. Mr. Schokman, for the appellant has been unable to find any reported Indian decision to this effect. But in the *Digest* he has found a reference to an Indian case, the report of which is not in the Library, where it was held that where a matter comes fairly under the provisions of section 211 of the Indian Code, which is equivalent to our section 208, and where a sanction is needed in order that a prosecution may proceed under that section, to proceed without any such sanction under section 182, equivalent to our section 180, is to evade the salutary provisions of the law. So that in the present instance no proper authority in support of the Ceylon cases has been cited to me, and the matter has been further complicated by an appearance on behalf of the Attorney-General as respondent to the appeal. I propose to follow the general rule of the Court, and say that where a complaint discloses a *prima facie* case of a higher offence, it is not right for the Magistrate to take proceedings for a lesser offence. Without, therefore, going in any way into the

¹ (1909) 13 N. L. R. 9.

² (1905) 13 N. L. R. 10.

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facts of this case, or deciding whether the conviction under section 180 be right or wrong, I propose to set aside the conviction and send the case back for non-summary proceedings on charges which include section 208. It is unnecessary for me at present to consider whether a charge should also be framed under section 180. It may be that the Magistrate, who has all the facts before him, or the Attorney-General, when he comes to frame charges, may decide to frame a charge under section 180, as well as adding a charge under section 208.

I accordingly set aside the conviction, and send the case back for non-summary proceedings.

Sent back.
