

**In Re: Subban Samban**

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**SooperKanoon Citation :** [sooperkanoon.com/802434](http://sooperkanoon.com/802434)

**Court :** Chennai

**Decided On :** Dec-02-1943

**Reported in :** AIR1944Mad391

**Appellant :** In Re: Subban Samban

**Judgement :**

ORDER

**Kuppuswami Ayyar, J.**

1. The main point urged before me in this petition is that even if the accusation is false the petitioner cannot be convicted for an offence punishable under Section 211, Penal Code, as all that he had done in this case was to send a report to his official superior in the discharge of his duties and that he had not sent it with intent to set the criminal law in motion. The petitioner was a gangman employed in the South Indian Railway Company. On the date of occurrence when he was returning from Mettur he noticed a person removing two keys on the railway line. He caught hold of him but he ran away. He picked the two keys and handed it over to the station master of Ambathurai and gave a report, Ex. G. That it was done only for the purpose of giving information as regards the state of the railway line is clear from the last sentence in that report which is as follows : 'There is no obstruction whatever in the way of the train running along the lines.' It is the duty of the gangman to watch the line and report to the authorities about its condition, so that they may take steps to prevent trains running on the line, if there be any defect.

That is why he had sent a report. There is nothing in the report to indicate that the intention of the petitioner when he sent a report was that criminal proceedings should be started against any one. In a very nearly similar case, in *Empress v. Jamoona* (1981) 6 Cal. 620, the Calcutta High Court has held that such a report not made to a police officer or to an officer who had powers of investigation in respect of such crimes, could not be said to amount to setting the criminal law in motion or making a false charge. The accused in that case was said to have made a report to the Station Staff Officer accusing a non-commissioned officer of having committed rape on her. An inquiry was made and the charge was found to be false by the military authorities and the Commanding Officer caused the appellant to be prosecuted in the criminal Court for an offence punishable under Section 211, Penal Code. She was convicted and the matter was taken to the High Court and it was held that the appellant neither instituted nor caused to be instituted a criminal proceeding though it was true she charged a non-commissioned officer with an offence. As the Station Staff Officer was neither a Magistrate nor a police officer, it was held that Section 211 would not apply. This case was referred to in *Sess. Judge, Tinnevely v. Sivan Chetti* (1909) 32 Mad. 258 and was not dissented from but distinguished. In the latter case information was given to the village Munsif and it was held that it would bring the case within the purview of Section 211. At p. 264 there is the following observation : 'But if a man made a complaint to one of the other persons having a legal obligation under that section to report to the police or Magistrate and did this with the intention of setting the criminal law in motion, we think that he would come not only within the terms of the section but within the mischief which the law desired to meet.' In the present case the station master was not a person who was entitled to investigate into the crime. The information was not given with intent to set the criminal law in motion; but in the discharge of his duties as gangman to give such information about the line to the station master. I therefore find that the petitioner cannot be convicted for the offence punishable under Section 211, Penal Code, by reason of his. having given the report even though what was stated there was false. I therefore set aside the conviction and sentence and acquit the petitioner. The fine, if already collected will be refunded.

