**In Re: Nandamuri Anandayya**

**In Re: Nandamuri Anandayya**

**SooperKanoon Citation** : sooperkanoon.com/815739

**Court** : Chennai

**Decided On :** Feb-27-1914

**Reported in** : AIR1915Mad812; 25Ind.Cas.630

**Judge** : Sankaran Nair and ;Ayling, JJ.

**Appellant** : In Re: Nandamuri Anandayya

**Judgement** :

**Ayling, J.**

1. Appellant has been convicted of an offence under Section 211 of the Indian Penal Code in respect of a statement, Exhibit B, given by him to the Head Constable in charge of Grudivada Police Station (Prosecution Witness No. 2) on 5th May 1912. In this statement he charges five persons (Prosecution Witnesses Nos. 5 to 9) with having robbed him of jewels and committed dacoity,

2. We see no reason to distrust the evidence of Prosecution Witness No. 2; and we are satisfied that the statement, Exhibit B was given by appellant, and given with a fall knowledge of its purport and probable consequences. It is not suggested that the statements it contains as to the alleged dacoity are true and we have no doubt they are false.

3. It has been argued, however, on various grounds that the conviction is bad in law and with these arguments we proceed to deal.

4. The first contention is that the statements in Exhibit B cannot constitute an offence under Section 211 of the Indian Penal Code, because a charge had already been made and criminal proceedings instituted against Prosecution Witnesses Nos. 5 to 9 by a telegram, Exhibit A, which reached the Bezwada Police Inspector, Prosecution Witness No. 1, on April 27th. The Sessions Judge finds, and in our opinion rightly, that this telegram was despatched by appellant. It runs thus: 'Dacoity, Kalavaparnula; property lost, kindly come immediately. Nandamuri Anan-dayya.' It will be seen that no names are mentioned of persons alleged or pected of complicity in the dacoity, so that, it cannot be held to constitute a 'false charge' within the meaning of Section 211. The question is whether it could amount to causing the institution of criminal proceedings against the five malas whose names were subsequently given in Exhibit 13. The contention of appellant's Vakil is that on receipt of Exhibit A, Prosecution Witness No. 1 started an investigation under Section 157 of the Criminal Procedure Code into the complaint of dacoity, that the statement, Exhibit B, was recorded in the course of that investigation, and that Exhibit B cannot, therefore, be regarded as the institution of the criminal proceedings.

5. Reliance is placed on the cases reported in Emperor v. Jonnalagadda Venlcatrayudu 28 M. 565 : 3 Cri.L.J. 108; Chinna Ramana Gowd v. Emperor 31 M. 506 : 9 Cri.L.J. 77 : 18 M.L.J. 573 and Sessions Judge of Tinnevelly Division v. Sivan Chetty 1 Ind. Cas. 187 : 32 M. 258 : 9 Cri.L.J. 170 : 5 M.L.T. 269. All these deal with the legal effect, in connection with Section 211 of the Indian Penal Code, of information personally furnished to a village headman or other person mentioned in Section 45 of the Criminal Procedure Code, regarding matters therein referred to and have no particular bearing on the question now before us. Section 157 empowers a Police Officer to take action when he has reason to suspect the commission of a cognizable offence 'from information received or otherwise.' The phrase 'information received' undoubtedly refers to information furnished and recorded under Section 154 of the Criminal Procedure Code, and it cannot be contended that the telegram, Exhibit A, was such information. The words or otherwise' are, no doubt, wide enough to cover the receipt of a telegram or even less definite and less satisfactory sources of information. But the question remains whether on receipt of Exhibit A, Prosecution Witness No. 1 did, as a fact,

institute an investigation under the section. What the Inspector, Prosecution Witness No. 1, actually did is clear from his own evidence and the endorsement on Exhibit A. The day after receipt of the latter he went to Kalavapamula, questioned the Village Officers and others and ascertained that no one had heard of a dacoity and that no one named Nandamuri Anan-iayya was known in the village. He then +. the telegram to the Gudivada Inspector (Gudivada being the place from which it had been despatched) with a request to have inquiries made as to who is the sender of the message and if it is true.' The Gudivada Inspector referred the telegram for report to the Station House Officer of Gudivada (Prosecution Witness No. 4) and while it was pending with him, appellant presented himself before him and gave the statement Exhibit B.

6. Now there is nothing in all this indicative of an investigation under Section 157 and the fact that the Bezwada Inspector did not consider himself to be conducting one, is apparent from the simple fact that he did not send an occurrence report to the Magistrate--a step which is an essential preliminary under that section to the commencement of an investigation..

7. It can hardly be contended that every inquiry which a Police Officer makes must necessarily be an investigation under Section 157. Most investigations are initiated on information recorded under Section 154 and vouched for by the informant. But the Police must frequently- hear of alleged offences from less reliable sources, e.g., village gossip, or the receipt of telegram, which, so far as authenticity goes, stands in no better position. In such cases it is discretionary with the officer to take action or not and before deciding as to the course to adopt, he may frequently deem it well to make a few preliminary and informal inquiries as to whether there is anything in what he has heard to render a formal investigation desirable. This is what, as it seems to us, the Inspector has, done in the present case and we have no hesitation in holding that his action did not amount to an investigation under Section 157.

8. As regards the Gudivada Head Constable his evidence as Prosecution Witness No. 2 makes it perfectly clear that he also did not register any offence, but made informal inquiries under the orders of his departmental superiors as to the identity

of the sender of Exhibit A.

9. We, therefore, hold that up to the time of recording the statement, Exhibit B, no criminal proceedings had been instituted. It is next argued that Exhibit B cannot be the basis of a conviction under Section 211, because the dacoity was alleged to have been committed outside the territorial limits of the Gudivada Police Station and, therefore, Prosecution Witness No. 2 had no power to investigate it. This argument is equally, unsustainable. The Criminal Procedure Code is curiously silent as to the correct procedure to be adopted by a Station House Officer who receives information of the commission of a cognizable offence outside his station limits. But there is nothing in Section 154 to prevent his receiving and recording the information though he has no power under Section 157 to conduct an investigation. In the present case, Prosecution Witness No. 2 recorded the information given by appellant in Exhibit B and submitted it to his superior officer, the Gudivada Inspector. The latter forwarded it to the Bezwada Inspector (Prosecution Witness No. 1), who sent it down to the Station House Officer of Vuyyur (Prosecution Witness No. 3) within whose station limits the dacoity was said to have "been committed. The latter, on receipt, for the first time registered the dacoity as Crime No. 38 and instituted a formal investigation under Section 157, in the course of which he took a further statement from appellant (Exhibit C).

10. In our opinion Exhibit B and nothing else must be regarded as the cause of the institution of the criminal proceedings against the malas.

11. The last contention is that as the basis of the charges framed by the Committing Magistrate was Exhibits A and C the Sessions Judge was not justified in amending the charge to one with reference to Exhibits B and C. The Sessions Judge framed his charge at the outset of the trial, no objection appears to have been taken and no attempt is made to show how appellant was prejudiced. In our opinion the case is covered by Section 228 of the Criminal Procedure Code.

12. We confirm the conviction and sentence and dismiss the appeal.

**Sankaran Nair, J.**

13. I agree.